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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 405

CHARLES SWANSON, PETITIONER,

vs.

MARRA BROTHERS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 6, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 405

CHARLES SWANSON, PETITIONER,

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 23, 1945.

IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

No. 8853.

CHARLES SWANSON,

Appellant,

v.

MARPA BROTHERS, INC.

Appeal from Judgment of the District Court of the United States for the Eastern District of Pennsylvania.

Appendix to Brief for Appellant.

ABRAHAM E. FREEDMAN,
FREEDMAN, LANDY AND LORRY,
906 Jefferson Building,
Philadelphia, Pa.,
Attorneys for Appellant.

International, 236 Chestnut St., Phila. 6, Pa.

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Appendix.

RELEVANT DOCKET ENTRIES.

May 26, 1944.	Complaint, filed.
May 26, 1944.	Summons exit.
May 26, 1944.	Plaintiff's demand for jury trial, filed.
June 3, 1944.	Summons returned: "on May 29, 1944 served", and filed.
June 16, 1944.	Motion to dismiss, filed.
June 19, 1944.	Order to place case on the Argument List, filed.
Sept. 12, 1944.	Argued sur motion to dismiss. C. A. V.
Oct. 16, 1944.	Opinion, Bard, J., granting motion to dismiss, filed.
Oct. 16, 1944.	Judgment dismissing action, filed. 10/17/44 Noted & Notice mailed.
Dec. 14, 1944.	Plaintiff's notice of appeal, filed. 12/15/44 Copy to Rawle & Henderson.
Dec. 14, 1944.	Copy of Clerk's notice to U. S. Circuit Court of Appeals, filed.
Jan. 31, 1945.	Order of Court extending time for filing record on appeal to Mar. 12, 1945, filed. 2/1/45 Noted.
Feb. 7, 1945.	Appellant's designation of record on appeal, filed.
Feb. 14, 1945.	Order of Court directing transmittal of original record to U. S. Circuit Court Court of Appeals, filed.

COMPLAINT.

Plaintiff, Charles Swanson, claims of the above named defendant, the sum of Twenty-five Thousand Dollars ($25,000.00) with lawful interest thereon, upon a cause of action whereof the following is a true statement.

(1) Plaintiff is a citizen and resident of the State of Pennsylvania.

(2) Defendant, Marra Brothers, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of New York and licensed to do business within the State of Pennsylvania.

(3) Upon information and belief, plaintiff avers that at all the times hereinafter mentioned, defendant entered into a contract with the representatives of the S. S. "Meyer London" for the purpose of loading cargo aboard the said vessel at Pier 98, South Wharves, in the City of Philadelphia.

(4) On or about the 14th day of March, 1944, plaintiff was engaged by the defendant as a longshoreman to assist in loading cargo aboard the S. S. "Meyer London" while the said vessel was berthed at Pier 98, South Wharves.

(5) On or about the 16th day of March, 1944, plaintiff commenced his work at 7:00 P. M. o'clock. He was stationed, in the course of his employment, on the dock beside the vessel and engaged in hooking or unhooking certain cases containing airplane parts. While a draft was being hoisted to the deck of the vessel, a life raft, which was part of the ship's equipment, became loosened from its moorings and fell down over the ship's railing to the pier below, striking the plaintiff and causing him the injuries which are more specifically hereinafter set forth.

(6) Disregarding its duty in the premises, defendant, by its agents, servants and employees, was careless and negligent, and the vessel was unseaworthy in:

(a) failing to provide a reasonable and safe place for plaintiff to perform his duties;

(b) permitting the life raft to be improperly secured;

(c) failing to make an adequate inspection;

(d) failing to take adequate precautions to prevent the falling of the life raft;

(e) failing to provide a safe and seaworthy vessel and appliances under the circumstances;

(f) failing to take adequate precautions for the safety of the plaintiff under the circumstances.

(7) By reason of the premises, plaintiff was then and there generally wounded and injured as aforesaid; he suffered a severe sprain and fracture of the right knee and ankle; he suffered a comminuted fracture shaft of the right fibula; he suffered a dislocation of the right ankle; he suffered a concussion of the brain and a severe injury to his head; he suffered a severe shock to his nerves and nervous system; he has suffered excruciating and agonizing aches, pains, mental anguish, shock and disability; he has been unable to assume his usual duties and occupation for a long period of time in the past, and upon information believes and therefore avers that his injuries have become aggravated and that he will be disabled from performing his usual duties and occupation for a long period of time in the future; he has in the past and will in the future be compelled to expend large sums of money for medical care and treatment.

(8) The within cause is brought pursuant to the Maritime Law as modified by Section 33 of the Merchant Marine Act of 1920.

WHEREFORE, CHARLES SWANSON, claims the sum of Twenty-five Thousand Dollars ($25,000.00) and brings this action to recover the same from the defendant.

FREEDMAN AND GOLDSTEIN,
By /s/ ABRAHAM E. FREEDMAN,
Attorneys for Plaintiff.

MOTION TO DISMISS COMPLAINT.

The defendant moves the Court as follows:

1. To dismiss the action on the ground that the Court lacks jurisdiction of the subject matter set forth in the Complaint for the reasons hereinafter set forth;

2. To dismiss the action because the Complaint fails to state a claim against the defendant upon which relief can be granted for the reasons hereinafter set forth.

The allegations set forth in the Complaint state that the plaintiff, a longshoreman, was injured while on the dock and not on the vessel which was being loaded. Although prior to the Longshoremen and Harbor Workers' Act, the Jones Act applied to longshoremen who were injured while performing maritime service on a vessel lying in port in navigable water, injuries to longshoremen off the vessel do not come under the admiralty law and more particularly not under the Jones Act, under which plaintiff's suit has been instituted. The plaintiff's remedy is within the provisions of the Pennsylvania Workmen's Compensation Act, under which the plaintiff has already received, and still is receiving, compensation from the defendant and its insurance carrier, as will more fully appear from the Exhibits A and B attached hereto. The Workmen's Compensation Board of the Commonwealth of Pennsylvania, as aforesaid, has already assumed jurisdiction of the matters set forth in the Complaint and the District Court of the United States does not have jurisdiction to entertain the above case.

In support of the within motion to dismiss, the defendant files herewith the affidavit of W. M. Brown, which is attached hereto as Exhibit A and a copy of an agreement for compensation in the case of Charles Swanson versus Marra Brothers, Inc., on file in the Bureau of Workmen's Compensation of the Department of Labor and Industry, Commonwealth of Pennsylvania, duly certified by the

Workmen's Compensation Board, which is attached hereto as Exhibit B.

RAWLE & HENDERSON,
By /s/ JOSEPH W. HENDERSON,
Attorneys for Defendant,
1910 Packard Building,
Philadelphia 2, Pennsylvania.

EXHIBIT A.

Affidavit of W. M. Brown.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } ss.:

W. M. BROWN, being duly sworn according to law, deposes and says, as follows:

That he is Acting District Claim Manager of American Mutual Liability Insurance Co., which is the insurance carrier for Marra Brothers, Inc., under The Pennsylvania Workmen's Compensation Act.

That on April 11, 1944, the plaintiff executed an open compensation agreement between him and Marra Brothers, Inc., as employer, and American Mutual Liability Insurance Co., as insurance carrier, #4,445,087, covering compensation to be paid to him in the amount of $18.00 per week, beginning March 23, 1944, for an injury sustained on March 16, 1944, while engaged as a longshoreman in Philadelphia, Pennsylvania, when a "life raft was loosened by cable, sliding down raft cradle striking man, fracturing right fibula and fracture of right ankle".

That said compensation agreement has been filed with the Bureau of Workmen's Compensation of the Department of Labor and Industry, Commonwealth of Pennsylvania, and been approved by said Bureau.

That commencing March 23, 1944, said Charles Swanson has received from his employer and its insurance carrier pursuant to the provisions of the aforesaid open com-

pensation agreement, and is still receiving, the compensation payment of $18.00 per week and no proceedings have been instituted for the modification or termination of said compensation agreement by supplemental agreement, by order of the Workmen's Compensation Board, or by final receipt.

That the deponent has read the Complaint filed in the above-entitled case and states that the occurrence set forth therein is the same occurrence as described in the aforesaid open compensation agreement for which the plaintiff is being paid compensation.

/s/ W. M. Brown.
W. M. Brown.

Sworn to and subscribed before me this 15th day of June A. D. 1944.

Emma M. Becker,
(Seal) *Notary Public.*

My Com. Expires at the end of the next session of the Senate.

EXHIBIT B.

Agreement for Compensation for Disability or Permanent Injury.

Commonwealth of Pennsylvania
Department of Labor and Industry
Bureau of Workmen's Compensation
Harrisburg, Pa.

Every question must be answered either with appropriate statement or figures, or the word "NONE."

Pa.—Phila.—S.

Date April 11, 1944

Department Accident and Agreement No. 4445087
Employer-Insurer No. 7-45WC-253551-10039

We, the undersigned, agree upon the following facts as to the injuries sustained by the undersigned employe in the employ of his employer:

1. Business of employer Stevedoring
2. Occupation of employe Longshoreman
3. Date of accident 3-16-44
4. Date disability began 3-16-44
5. Place of accident Phila., Pa.
6. Date of birth Age 37
7. Description of accident and nature of injury Life raft was loosened by cable, sliding down raft cradle striking man, fracturing right fibula and fracture of right ankle.
8. (a) Fixed wage $27.00 weekly; $40 monthly; $160 yearly; $1800

   (b) Seasonal: Total wages from all occupations during 12 calendar months preceding accident $1800

   (c) Wage fixed by day, hour or output, during 52 weeks or 12 months preceding accident:

13 Wks. 3 Mo.	From	To	Wages	Board and Lodging	Total Wages
1st. period	.....	.....	$.....	$.....	$.....
2nd. period	.....	.....	$.....	$.....	$.....
3rd. period	.....	.....	$.....	$.....	$.....
4th. period	.....	.....	$.....	$.....	$.....

   Computation: $..... divided by ..... weeks equals $..... average weekly wage $.....

   Note:—Weekly wages must be computed in accordance with Section 309 of the Act.

9. Said employer shall pay to said employe compensation at the rate of $18.00 per week, beginning 3-23-44 payable weekly and medical and hospital expenses, sub- (Weekly—Semi-monthly—Monthly)
   ject to the limits of time and amount provided by the Pennsylvania Workmen's Compensation Act and subject to modification or termination by Supplemental Agreement, Order of the Workmen's Compensation Board or Final Receipt.

10. Compensation is payable for None weeks for the loss of None under section 306 (c).

11. Further matters agreed upon None

Jim Trainer (Signed)
(Witness for employe)

.....
(Witness's Address)

Jim Trainer (Signed)
(Witness for employer)

.....
(Witness's Address)

Chas. Swanson (Signed)
(Signature of employe)
MARRA BROS. INC.
(Employer)
12 South 12th St., Phila. 7, Pa.
(Employer's Address)
AMERICAN MUTUAL LIAB. INS. CO.
(Authorized Agent or Insurance Carrier)
772 Public Ledger Bldg., Phila. 6, Pa.
(Address)
/s/ W. M. BROWN
Acting District Claim Manager
Phila. South

Insurer's office to which correspondence regarding this agreement is to be sent:
American Mutual Liab. Ins. Co.
772 Ledger Bldg., Phila. 6, Pa.
Philadelphia (6) Pa.

Charles Swanson
(Claimant)
1309 E. Moyamensing Ave., Phila. 47, Pa.
(Street) (City)
..... Pennsylvania
(County) (State)

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF LABOR AND INDUSTRY
WORKMEN'S COMPENSATION BOARD
HARRISBURG

The foregoing is hereby certified to be a true and correct copy of Agreement for Compensation in the case of Charles Swanson vs. Marra Bros. Inc. as full, entire, and complete as the same remains on file in the Bureau of Workmen's Compensation of the Department of Labor and Industry.

Certified this 13th day of June 1944.

Daniel G. Murphy
Chairman
WORKMEN'S COMPENSATION BOARD

ATTEST:

W. R. Gallagher
Secretary
WORKMEN'S COMPENSATION BOARD
(SEAL)

OPINION,

On Motion to Dismiss Complaint.

October 16, 1944.

BARD, J.

This action was instituted by a longshoreman against his employer to recover damages under the provisions of Section 33 of the Merchant Marine Act of 1920, 46 U. S. C. A. § 688, popularly known as the Jones Act.[1] The complaint alleges that plaintiff was standing on a dock assist-

[1] The relevant portions of this Act read as follows: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such actions all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ."

ing in the loading operation of a vessel lying in the Delaware River, in the harbor of Philadelphia, when he was struck by an object falling from the ship and sustained the injuries upon which the suit is based.

Defendant has filed a motion to dismiss the complaint on the ground that the cause of action alleged by the plaintiff is not within admiralty jurisdiction and the Jones Act because the injuries were sustained while plaintiff was on land. It asserts that plaintiff's remedy for such injuries is under the Workmen's Compensation Act of Pennsylvania, pursuant to the provisions of which he has been receiving compensation payments.

The question here presented is an interesting one and is not free from difficulty. Defendant points out that the decisions of the Supreme Court with respect to injuries to longshoremen have maintained a sharp distinction between those received on the dock (which has been held to be "land", Cleveland T. & V. R. Co. v. Cleveland Steamship Co., 208 U. S. 316, 52 L. Ed. 508; State Industrial Commission v. Nordenholt Corp., 259 U. S. 263, 66 L. Ed. 933) and those received on navigable waters. In the former situation recovery under the admiralty laws has been denied and the plaintiff relegated to a claim under applicable state compensation laws, while in the latter case recovery may be had under the admiralty laws only and state compensation laws are held inapplicable by reason of the exclusive federal jurisdiction established by Article III, Section 2 of the Constitution.

Thus, in Southern P. Co. v. Jensen, 244 U. S. 205, 61 L. Ed. 1086, it was held that a claim under the New York Workmen's Compensation laws could not constitutionally be allowed to a stevedore injured while working aboard a vessel in navigable waters.

Conversely it was thereafter held that the New York Workmen's Compensation Act was applicable to a stevedore who was injured while working on the dock. State Industrial Commission v. Nordenholt Corp., 259 U. S. 263,

66 L. Ed. 933, where the court said at page 272: "When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land."

In 1928 the rule of the Nordenholt case (in which the cause of action had arisen before the passage of the Jones Act in 1920) was reiterated by the Supreme Court in T. Smith & Son v. Taylor, 276 U. S. 179, 72 L. Ed. 520. In that case a longshoreman employed at unloading a vessel at a dock was killed when he was knocked from the wharf into the water. Compensation was awarded to his dependents under the Workmen's Compensation Act of Louisiana and it was contended in the Supreme Court that this award was error because the case was exclusively within the admiralty and maritime jurisdiction of the federal government. This contention was rejected and the award under the state law was upheld.[2]

These decisions would appear to be directly applicable to and controlling of the case at bar. Plaintiff has, however, presented an able argument based on other decisions of the Supreme Court which is not without some force. These decisions begin with Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 58 L. Ed. 1208, in which the Su-

[2] The converse situation was presented to the Supreme Court in Minnie v. Port Huron Terminal Co., 295 U. S. 647, 79 L. Ed. 1631, in which a longshoreman was injured when knocked from the vessel on to the dock. In that case it was held that the injury was received while the plaintiff was upon navigable waters and hence an award under the State Compensation Act was invalid.

preme Court analyzed the character of the work performed by stevedores and held that it was maritime in character and that therefore an action for injury sustained by a stevedore aboard a vessel in navigable waters was within the "admiralty and maritime jurisdiction" of the federal courts.

Following the passage of the Jones Act in 1920, the Supreme Court held that a stevedore "employed in maritime work on navigable water" was a "seaman" within the meaning of that Act. International Stevedoring Co. v. Haverty, 272 U. S. 50, 71 L. Ed. 157. Said Mr. Justice Holmes at page 52: "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 62. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case they should be in the other. In view of the broad field in which Congress has disapproved and changed the rule introduced into the common law within less than a century, we are of opinion that a wider scope should be given to the words of the act, and that in this statute 'seamen' is to be taken to include stevedores employed in maritime work on navigable waters as the plaintiff was, whatever it might mean in laws of a different kind."

In 1927 Congress enacted the Longshoremen and Harbor Workers Compensation Act,[2] which has been discussed at length by both parties. This Act provides the exclusive

[2] Act of March 4, 1927, c. 509, §§ 1 to 50, 44 Stat. 1424, 33 U. S. C. A. §§ 901-950.

remedies of longshoremen who are injured while on navigable waters, but does not extend to injuries sustained by longshoremen on land, Johnson v. Marshall, 128 F. 2d 13, certiorari denied 317 U. S. 629, 87 L. Ed. 508. Hence the existing law with respect to the latter situation was not altered by the enactment of this legislation.

The scope of the Jones Act was most recently considered by the Supreme Court in 1943 in the case of O'Donnell v. Great Lakes Dredge & Dock Co., 318 U. S. 36, 87 L. Ed. 596. In that case a deck-hand on a vessel owned by defendant was injured while he was on the dock, at the order of the master of the vessel, assisting in repairing a gasket connecting pipes through which the cargo was discharged. The district court dismissed the plaintiff's action under the Jones Act on the ground that that Act did not apply to injuries to a seaman not occurring on navigable waters, and this ruling was affirmed by the Circuit Court of Appeals. The Supreme Court reversed and held that the plaintiff was entitled to maintain an action under the Jones Act even though the injuries were sustained while he was on land.

Plaintiff's argument, therefore, is that since the Haverty case decided that a "longshoreman" is a "seaman" within the meaning of the Jones Act and the O'Donnell case decided that injuries to seamen are within the Jones Act, whether sustained on land or on water, the necessary conclusion is that the Jones Act applies to injuries sustained by longshoremen in the course of their employment on land. The facts and the reasoning of these two cases, however, do not make that conclusion a necessary one. It will be noted that in the Haverty case the word "seaman" in the Jones Act was construed to include stevedores "employed in maritime work on navigable waters", which leaves undecided the question whether a stevedore employed on maritime work on land would be similarly regarded as within the Act. And in the O'Donnell case the Supreme Court expressly recognized that actions to recover damages for personal injuries sustained on land are

in general subject to maritime law, but held that the Jones Act extended that Act to "seamen" within the orbit of the operation of their ancient right to maintenance and cure for injuries suffered in the service of their vessel, whether on sea or on land. Said Chief Justice Stone at page 41-43: "As we have said, the maritime law, as recognized in the federal courts, has not in general allowed recovery for personal injuries occurring on land. But there is an important exception to this generalization in the case of maintenance and cure. From its dawn, the maritime law has recognized the seaman's right to maintenance and cure for injuries suffered in the course of his service to his vessel, whether occurring on sea or on land . . .

"In its origin, maintenance and cure must be taken as an incident to the status of the seaman in the employment of his ship. See Cortes v. Baltimore Insular Line, 287 U. S. 367, 372. That status has from the beginning been peculiarly within the province of the maritime law, see Calmar S. S. Corp. v. Taylor, supra, and upon principles consistently followed by this Court it is subject to the power of Congress to modify the conditions and extent of the remedy afforded by the maritime law to seamen injured while engaged in a maritime service.

"The right of recovery in the Jones Act is given to the seamen as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters. See Waring v. Clarke, supra; Insurance Co. v. Dunham, supra.

"It follows that the Jones Act, in extending a right of recovery to the seaman injured while in the service of his vessel by negligence, has done no more than supplement the remedy of maintenance and cure for injuries suffered by the seaman, whether on land or sea, by giving to him the indemnity which the maritime law afforded to a seaman in-

jured in consequence of the unseaworthiness of the vessel or its tackle. Pacific S. S. v. Peterson, supra. Since the subject matter, the seaman's right to compensation for injuries received in the course of his employment, is one traditionally cognizable in admiralty, the Jones Act, by enlarging the remedy, did not go beyond modification of substantive rules of the maritime law well within the scope of the admiralty jurisdiction whether the vessel, plying navigable water, be engaged in interstate commerce or not."

That the Supreme Court recognized that a distinction may well be made between a seaman who is a crew member and is traditionally entitled to maintenance and cure under maritime law, and a longshoreman who has been construed to be a "seaman" under the Jones Act, at least to the extent that he works on navigable water, is obvious from its final remarks in its opinion in the O'Donnell case, at pages 43 and 44: "We have no occasion to consider or decide here the question whether a longshoreman, temporarily employed in storing cargo on a vessel, if entitled to recover under the Jones Act for injuries sustained while working on a vessel (compare International Stevedoring Co. v. Haverty, supra, with Nogueira v. N. Y., N. H. & H. R. Co., 281 U. S. 128-137), could recover for an injury received on shore in the circumstances of this case. Compare State Industrial Commission v. Nordenholt Corp., 259 U. S. 263, with South Chicago Co. v. Bassett, 309 U. S. 251, 256."

I am therefore constrained to hold that, in view of the distinction made by the Supreme Court and frequently reiterated in its opinions between injuries sustained by longshoremen while on shore and those sustained while on navigable water, plaintiff is not a "seaman" entitled to maintain the present action under the Jones Act. It is true, as plaintiff has pointed out, that the Nordenholt case involved injuries sustained prior to the time the Jones Act became operative. The same is not true, however, with respect to the Taylor case, which held that the State Compensation

Act was applicable to a longshoreman injured while on the dock, although it does appear to be true that the possibility that the Jones Act was applicable to the execution of the state law was not argued to or considered by the Supreme Court in that case. However this may be, it is not for this court to disregard that decision as well as the distinction uniformly drawn by the Supreme Court, prior to the O'Donnell case, between injuries on land and those sustained on navigable water. If the decision in the O'Donnell case is to be extended to longshoremen injured while working on a dock—an extension which the reasoning of that case and its express reservation of this question make dubious—the extension should be made by that court itself.

The motion to dismiss is granted.

JUDGMENT.

Before BARD, *J.*

AND NOW, to wit: October 16, 1944, in accordance with the opinion of the Court granting defendant's motion to dismiss, it is ORDERED that the above action be and the same is hereby dismissed with costs to the defendant.

By THE COURT,

Attest:

/s/ GILBERT W. LUDWIG,
Gilbert W. Ludwig,
Deputy Clerk.

[fol. 17] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT

[Title omitted]

ORDER ASSIGNING HON. JOHN D. MARTIN, SR. AND HON. HARRY E. KALODNER, FOR ARGUMENT—Filed June 7, 1945

And now, to-wit: this 7th day of June A. D. 1945, it is ordered that Hon. John D. Martin, Sr., U. S. Circuit Judge, for the Sixth Circuit, and Hon. Harry E. Kalodner, District Judge, for the Eastern District of Pennsylvania, be, and they are hereby assigned to sit in above case in order to make a full court.

Gerald McLaughlin, Circuit Judge.

[File endorsement omitted.]

[fol. 18] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

MINUTE ENTRY—June 7, 1945

And afterwards, to wit, the 7th day of June, 1945, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John D. Martin and Honorable Gerald McLaughlin, Circuit Judges, and Honorable Harry E. Kalodner, ~~—~~ Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 13th day of June, 1945, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 19] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8853

CHARLES SWANSON, Appellant,

v.

MARRA BROTHERS, INC.

Appeal from Judgment of the District Court of the United States for the Eastern District of Pennsylvania

Before Martin and McLaughlin, Circuit Judges, and Kalodner, District Judge

OPINION OF THE COURT—Filed June 13, 1945

PER CURIAM:

The judgment of the District Court is affirmed for the reasons set forth in the opinion of Judge Bard, 57 F. Supp. 456.

[fol. 20] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1944

No. 8853

CHARLES SWANSON, Appellant,

vs.

MARRA BROTHERS, INC.

Present: Martin and McLaughlin, Circuit Judges, and Kalodner, District Judge.

On Appeal from the District Court of the United States, for the Eastern District of Pennsylvania

JUDGMENT—Filed June 13, 1945

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

By the Court, Gerald McLaughlin, Circuit Judge.

June 13, 1945.

[File endorsement omitted.]

[fol. 21] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 22] Supreme Court of the United States

Order Allowing Certiorari—Filed November 5, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

[fol. 23] [Endorsed on Cover:] Seamen's Case. File No. 50,108. U. S. Circuit Court of Appeals, Third Circuit, Term No. 405. Charles Swanson, Petitioner, vs. Marra Brothers, Inc. Petition for a writ of certiorari and exhibit thereto. Filed September 6, 1945. Term No. 405 O. T. 1945.

COPY

Office - Supreme Court, U. S.
FILED
OCT 19 1945
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

Petitioner's printed

No. 405

CHARLES SWANSON,

Petitioner,

vs.

MARRA BROTHERS, INC.,

Respondent

BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI

ABRAHAM E. FREEDMAN,
909 Jefferson Building,
Philadelphia, Pa.,
Counsel for Petitioner.

SAMUEL H. LANDY,
WILFRED R. LOBBY,
CHARLES LAKATOS,
Of Counsel.

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CONSTITUTION OF THE UNITED STATES

Article 3, Section 2 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 405

CHARLES SWANSON,

Petitioner,

vs.

MARRA BROTHERS, INC.,

Respondent

BRIEF ON BEHALF OF PETITIONER ON WRIT OF CERTIORARI

I

The Opinions of the Courts Below

The opinion of the United States District Court for the Eastern District of Pennsylvania (R. 9) was rendered on October 16, 1944, and is reported in 57 F. Supp. 456.

The per curiam opinion of the United States Circuit Court of Appeals for the Third Circuit (R. 18) was rendered on June 13, 1945, and is reported in 149 F. (2d) 646.

II

Jurisdiction

1. The date of the judgment entered herein by the United States Circuit Court of Appeals for the Third Circuit affirming the judgment of the District Court, is June 13, 1945.

2. This suit was predicated upon the maritime law, as modified by the Act of Congress known as the Merchant Marine Act, March 4, 1915, c. 153, sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, sec. 33, 41 Stat. 1007, 46 U. S. C. A. 688.

3. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, C. 229 Sec. 1, 43 Stat. 938, United States Code, Title 28, Section 347 (a) and under Article 3, Section 2, of the Constitution of the United States.

III

Statement of the Case. Summary Statement of the Matter Involved

This is an action by a longshoreman, against his employer, for personal injuries, claiming the benefits of Sec. 33 of the Merchant Marine Act of 1920, more popularly known as the Jones Act.

The Complaint shows (R. 2-3) that the defendant, Marra Brothers, Inc., is a stevedoring company engaged in the business of loading and discharging cargo from vessels plying in navigation and commerce. On March 14, 1944, the defendant undertook to load the steamship "Meyer London", which was berthed at Pier 98, South Wharves in Philadelphia. Plaintiff was one of defendant's employees

assigned to load the vessel and at the particular moment of the incident involved herein he was on the pier alongside the vessel hooking up the drafts which were to be hoisted on to the deck of the vessel and thereafter stowed into the holds by other employees of the defendant. It was while one of the drafts was being hauled aboard the vessel that a life raft, part of the ship's equipment, became loosened from its moorings and fell to the pier, striking plaintiff and causing the injuries for which this suit was brought.

Defendant thereupon moved to dismiss the complaint upon the ground that the plaintiff's remedy is under the Workmen's Compensation Law for the State of Pennsylvania, and that he is not entitled to the benefits of the Jones Act.

The Opinions of the Courts Below

The learned District Judge held that although the Jones Act had been held to be applicable to longshoremen, it is limited to injuries sustained on the vessel and does not extend to injuries occurring on the dock, notwithstanding that the injured employee is engaged in the same enterprise as his fellow employees on the vessel. The Court recognized that longshoremen must be construed as seamen within the meaning of the Jones Act, and that the Jones Act covers seamen's injuries on shore, but felt constrained to hold, although recognizing that the question was not free from difficulty, that the benefits of the Jones Act did not extend beyond the water's edge, insofar as longshoremen are concerned, upon the authority of *T. Smith & Son v. Taylor*, 276 U. S. 179, 72 L. Ed. 520. The Court stated that while the latter decision did not consider or pass upon the applicability of the Jones Act, it did hold that a State Compensation Act was applicable to a longshoreman injured on shore, and therefore, if the Jones Act was to be applied to longshoremen's injuries on shore, that construc-

tion should be rendered by the Supreme Court itself. The decision of the District Court was affirmed by the Court of Appeals in a per curiam opinion.

IV

Specifications of Error

The Circuit Court of Appeals erred in the following respects:

First: In failing to hold that a longshoreman injured on on the pier in the course of his employment is a seaman within the meaning of the Jones Act and is governed by the provisions thereof.

Second: In holding that the Compensation Act for the State of Pennsylvania applied to an injury sustained by a longshoreman on the pier in the course of his employment.

Third: In holding that the applicability of the Jones Act depends upon the *place* where the injury occurs rather than upon the *nature of the service* being performed and its relation to the operation of the vessel plying in navigable waters.

Fourth: In holding that the *Nordenholt* and *Smith* v. *Taylor* cases are the controlling authorities governing the case at bar.

Fifth: In holding that a longshoreman is a seaman within the Jones Act only when working on the vessel and not while engaged in the same employment on the pier.

V

ARGUMENT

Summary of Argument

Prior to 1920, there was no Federal rule governing the rights of longshoremen injured ashore, and under the circumstances, a limited application of the state law was permitted so long as it did not encroach on the Admiralty jurisdiction. The passage of the Jones Act in 1920 provided a right of action for all "seamen", and, in the case of *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, 71 L. Ed. 157, the Supreme Court held that longshoremen were "seamen" within the meaning of that Act. That Act applies to all injuries sustained in the "course of employment" and contains no limitation as to the place where the injury occurs. In the case of *O'Donnell* v. *Great Lakes Dredge and Dock Co.*, 318 U. S. 36, 87 L. Ed. 596, the Supreme Court further held that the Jones Act applies equally to injuries on shore as well as aboard the vessel; the applicability of the Jones Act depends not on the *place* where the injury is inflicted, but on the *nature of the service* being performed and its relationship to the operation of the vessel plying in navigable waters. In 1927, Congress passed the Longshoremen's and Harborworkers' Compensation Act (March 4, 1927 C. 509, Sec. 1, 44 Stat. 1424—33 U. S. C. A. 901 et seq.), but limited its application to injuries sustained on navigable waters. Prior to the O'Donnell decision there was some doubt as to whether Congress could legislate in connection with injuries sustained on land. It is fair to assume therefore that Congress limited the scope of the Longshoremen's Act to injuries sustained only on navigable waters in order to avoid any possible constitutional objections. It was not until after the passage of the Longshore-

men's Act that the O'Donnell decision cleared the air and held that injuries sustained on the pier were within the scope of the maritime law if the service being performed was maritime in nature. Since the Longshoremen's Act is limited to injuries on the water, it is plaintiff's contention that injuries on the deck are governed by the law as it existed prior to that Act; the prior law being the Jones Act, which applies to injuries on the pier as well as on the water.

Petitioner makes the following contentions:

1. Prior to the passage of the Longshoremen's and Harborworkers' Compensation Act, longshoremen were accorded all the rights of seamen under the Jones Act.

2. The applicability of the Jones Act depends not on the place where the injury is inflicted, but rather on the nature of the service being performed and its relation to the operation of the vessel plying in navigable waters. Thus, the rights of a seaman injured on the dock in the course of his employment are governed by the Jones Act.

3. The Longshoremen's Act being restricted in its application to injuries sustained on navigable waters, the rights of longshoremen injured on the dock are not affected thereby. Consequently, a longshoreman injured on the dock is relegated to his rights under the Jones Act, and since Congress has, by that Act, legislated in the field, state compensation laws cannot be constitutionally invoked.

FIRST POINT

Longshoremen Have All the Rights of Seamen under the Jones Act

It is essential to a clear understanding of the longshoreman's rights to probe into the origin and development of this class of men who play such an important role in our

water transportation system. They are of course to be distinguished from the men who sail the ships into the remote corners of the world, but their work is so closely intertwined that the Merchant Marine could hardly operate efficiently without the cooperation of both.

In the early days of merchant shipping, the work of loading and discharging the cargo was performed by the ship's crew as part of its regular duties. With changing times and increased commerce, there arose a need for specialized skill and rapidity in the handling of equipment and cargo. Those duties having to do with the handling of cargo were therefore taken over by the type of men who came to be known as stevedores or longshoremen and because the duties which they performed had previously been those of the ship's crew, they were characterized for certain purposes as seamen. Their status is aptly analyzed in *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 58 L. Ed. 1208, as follows:

> "The libellant was injured on a ship, lying in navigable waters, and while he was engaged in the performance of a maritime service. We entertain no doubt that the service in landing and stowing a ship's cargo is of this character. Upon its proper performance depend in large measure the safe carrying of the cargo and the safety of the ship itself; and it is a service absolutely necessary to enable the ship to discharge its maritime duty. Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class 'as clearly identified with maritime affairs as are the mariners'."

From the earliest times the Courts extended as far as possible the same privileges and immunities to the longshoremen as were afforded to members of the crew. In the

"Canada", 7 Fed. 119 (1881) the Court held that a stevedore who unloaded the ship was entitled to a lien for wages against the vessel as though he were a member of the crew. In contrasting the status of the longshoreman with that of the crew member, the Court reviews the authorities and quotes with approval from the opinion of the learned Judge Benedict in the "Circassion" (1 Ben. 209) which is particularly appropriate at this point:

> "The same view was taken of the matter, on principle, by Judge Benedict, in the Circassion, 1 Ben. 209. He says: 'I confess that I have never been able to see any sound distinction between the nature of the services performed in stowing and breaking out the cargo of a ship and the services performed in its transportation. The stowage and the landing of the cargo form a necessary part of the contract of affreightment. Without the performance of this duty no freight can be earned. The safety of the ship and cargo depends, in a great measure, upon the care and skill displayed in the performance of this duty, and for its non-performance in a proper manner the ship is liable in the admiralty. It is a service which, when performed by the crew, as is frequently the case, is considered a maritime service, and compensated in the admiralty under the name of wages. And, when not performed by the crew, it devolves upon a class as clearly identified with maritime affairs as are the mariners, and fitted for their duty by a special and peculiar experience.'"

Further indication of judicial trend to extend all possible maritime benefits to longshoremen is evidenced in the case of *McCahan Sugar Refining Co.* v. *Stoffel*, 41 F. (2d) 651 (C. C. A. 3) where a longshoreman signed a certain paper in which he released his employer and agreed to be bound by the State Compensation Act. The Court of Appeals declared the release invalid under the Maritime

law upon the theory that a longshoreman is a seaman with all his peculiar rights and immunities. Said the Court:

> "There is no question that seamen, though favored by the law and regarded as wards in admiralty, are capable of making releases for maritime injuries, yet in making such releases their rights are tenderly guarded and their acts, when waiving or yielding their rights, are carefully scrutinized."
>
> . . . . . .
>
> *"The law regards a longshoreman or stevedore injured while engaged in maritime service aboard a ship lying in navigable waters, as a seaman with all his peculiar rights and immunities."* (Emphasis ours.)

One of the ablest discussions on the point is rendered by Circuit Judge Goodrich in *Sieracki* v. *Seas Shipping Co.*, 149 F. (2d) 98. In that case a longshoreman was injured by a falling boom due to a defective shackle. The Court found that the shipowner was not negligent because the defect could not be disclosed by a reasonable inspection, but nevertheless held the shipowner liable because of the warranty of seaworthiness. It was contended that the warranty extended only for the benefit of members of the crew, but the Court rejected that contention and held that longshoremen were seamen and entitled to the same warranty of seaworthiness afforded to members of the crew. A few brief excerpts from the opinion are most pertinent to the argument at bar: (p. 101)

> "We think it is undisputed that if the falling boom had hit one of the sailors the injured seaman could have recovered from the ship's owner, or the ship, on the basis of breach of warranty of seaworthiness, that warranty not being dependent upon a showing of negligence at all."
>
> . . . . . .

"What, then, are the reasons for and against the application of the protection against injuries from unseaworthiness to one engaged in loading and stowing a ship's cargo? There is no question that in fact such service is necessary in the performance of the business of the ship. Formerly the work was done by the ship's crew, but owing to the demand for rapidity and special skill it has become a special service, one which has been called "as clearly identified with maritime affairs as are the mariners". And so an injury to a stevedore comes within the classification of a marine tort."

* * * * * * *

"It seems, therefore, that when a man is performing a function essential to maritime service on board a ship the fortuitous circumstances of his employment by the ship owner or a stevedoring contractor should not determine the measure of his rights. This is the very basis on which the Jones Act, 46 U. S. C. A. § 688, was held applicable to give redress to an injured stevedore in International Stevedoring Co. v. Haverty."

In summing up the trend of the decisions of the United States Supreme Court, Judge Goodrich made this very pertinent concluding statement: (p. 102)

"The logical trend of the Supreme Court authority is, we think, in favor of extending to the stevedore the rights of a seaman when engaged in marine employment."

Thus, all through the law the trend, as Judge Goodrich stated, is to afford longshoremen as far as possible the same privileges possessed by members of the crew in the protection of their wages (The Circassion), their contracts (*McCahan* v. *Stoffel*), and their rights on account of personal injuries (*International Stevedoring Co.* v. *Haverty*—*Sieracki* v. *Seas Shipping Co.*) With the passage of the Jones Act, therefore, it was to be expected that longshore-

men should be considered "seamen" within the meaning of that Act and accorded the benefits thereunder.

The Jones Act incorporated into the maritime law, inter alia, a right of action for negligence and abolished the fellow servant rule. Shortly after the passage of the Act, it was contended by the stevedoring companies that the Act only applied to those "seamen" who were members of the crew and not to longshoremen. The question was presented to the Supreme Court in the case of *International Stevedoring Co.* v. *Haverty* (*supra*), and the Court again evidenced its consistent trend by classifying longshoremen as seamen within the meaning of the term "seamen" as used in the Jones Act. In analyzing the term "seamen" as it applied to longshoremen the Court said: (p. 52)

> "It is true that for most purposes, as the word is commonly used, stevedores are not "seamen". But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew."

The Court then goes on to point out that the longshoremen should not be prejudiced simply because they happen to be employed by the stevedore rather than by the vessel:

> "We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship."

Mr. Justice Holmes points out that the policy of the statute is directed to the protection of the men, and there should be no distinction in the application of the Act between longshoremen and members of the crew:

> "The policy of the statute is directed to the safety of the men and to treating compensation for injuries to

> them as properly part of the cost of the business. If they should be protected in the one case, they should be in the other."

Another pertinent decision which further emphasizes the same consistent trend is *Uravic* v. *Jarka Co.*, 282 U. S. 234, 75 L. Ed. 312. There, a longshoreman was killed on a German ship. It was contended there that the longshoreman could not possibly be considered as a seaman because the vessel flew the German flag and its crew was German. The Supreme Court rejected this contention with the following crystal clear statement: (p. 239).

> "Perhaps it would be a sufficient answer to the objections that while the § 33 is construed to give the rights of seamen to stevedores it does not say or mean that stevedores are to be regarded as seamen on the particular vessel upon which for the moment they happen to be at work. *They simply are given the rights of seamen and as they are American workmen they have the rights of American seamen as well on German as on American ships.*"

In summary, while the longshoreman may be distinguished from the member of the crew, there can be no doubt but that he has the rights of a seaman at least in connection with his claims for personal injuries, his earnings and his contracts. It has already been determined that longshoremen are "seamen" within the Jones Act; it would be anomalous to say that the scope of the Jones Act varies with the type of "seamen."

SECOND POINT

The Applicability of the Jones Act Does Not Depend on the Place Where the Injury Occurred But Rather on the Nature of the Service Being Performed and Its Relation to the Operation of the Vessel Plying in Navigable Waters.

Prior to the decision in the *O'Donnell* case, there was considerable confusion concerning the territorial scope of the Jones Act. It was contended by the employers from the very outset that the Act did not extend to injuries sustained on land even though the Act contained no such limitation. This contention was based on the proposition that the Act was applicable only to the extent that admiralty generally had jurisdiction, and it was reasoned, since that jurisdiction stops at the water's edge, that likewise marked the bound within which the Jones Act was applicable. This restrictive theory, which may be termed the geographical theory, gained and held a beachhead in the law until the decision in the *O'Donnell* case. In point of fact that theory was applied just as well to members of the crew as to longshoremen. In *O'Brien* v. *Calmar S. S. Corporation*, 104 F. 2d 148, a member of the crew was injured on the pier while handling the gangway in the course of his employment. The Court of Appeals held that the tort being committed on land was governed by the State Compensation law, and admiralty had no jurisdiction.

It will thus be noted that there was no distinction made between members of the crew and longshoremen in the application of the Jones Act. The same theory which the Courts below followed in the instant case to defeat a longshoreman's claim was used to deny recovery to a member of the crew. *The significance of this situation lies in the fact that recovery was denied in both cases, not because the Jones Act by its own terms is limited to torts com-*

mitted on the water, but because the courts read that interpretation into the Act. If such an interpretation were justified, then it would have to apply uniformly to all those employees covered by the Act. *Conversely, if the interpretation be erroneous then it is erroneous as to all employees and not merely to a portion of them.*

The utter fallacy of the geographical theory as it applies to the Jones Act is disclosed in the *O'Donnell* decision. In that case the Supreme Court points out that the Jones Act is intended, and so worded, as to include all injuries sustained *in the course of employment*. The seaman is just as much in the course of his employment while working on the pier as he is on the vessel. It is an absolute necessity that the crew go ashore in the performance of their duties, either to assist in mooring the vessel, to connect a fuel line, or in the performance of other duties related to the operation of the vessel. It was a paradoxical rule which the Court of Apepals laid down in the *O'Brien* case (supra), wherein a recovery was denied to a member of the crew who was injured while maneuvering the gangway on the dock, preparatory to attaching it to the vessel. That rule, and the geographical theory upon which it was based, was repudiated by the Supreme Court in the *O'Donnell* case upon the ground that the jurisdiction under the Jones Act depends not on the place where the injury is inflicted, but rather on the nature of the service being performed and its relation to the operation of the vessel plying in navigable waters. A brief analysis of the O'Donnell decision will show how completely the beachhead established by the *O'Brien* case has been wiped out.

Mr. Chief Justice Stone, speaking for the Court, significantly points out at the commencement of the Opinion that the term "seamen" as used in the Jones Act has been

interpreted to embrace longshoremen, as well as members of the crew: (p. 39)

> "The term 'seaman' has been interpreted to embrace those employed on a vessel in rendering the services customarily performed by seamen, including stevedores while temporarily engaged in stowing cargo on the vessel."

In considering the coverage under the Act, the Court makes the pertinent observation that the Act expressly covers all injuries sustained "in the course of employment"; and there is no reason to assume that those words do not mean what they say: (p. 39)

> "There is nothing in the legislative history of the Jones Act to indicate that its words 'in the course of his employment' do not mean what they say or that they were intended to be restricted to injuries occurring on navigable waters. On the contrary, it seems plain that in taking over the principles of recovery already established for railroad employees and extending them in the new admiralty setting (see The Arizona v. Anelich, 298 U. S. 110, 80 L. Ed. 1075, 56 S. Ct. 707, supra) to any seaman injured 'in the course of his employment', Congress, in the absence of any indication of a different purpose, must be taken to have intended to make them applicable so far as the words and the Constitution permit, and to have given to them the full support of all the constitutional power it possessed. Hence the Act allows the recovery sought unless the Constitution forbids it."

The Court then takes up the jurisdictional question and squarely repudiates the O'Brien line of decisions: (p. 40)

> "It is true that the jurisdiction in admiralty in cases of tort or collision is in general limited to events occurring on navigable waters."

. . . . . .

"But it cannot be supposed that the framers of the Constitution contemplated that the maritime law should forever remain unaltered by legislation, The Lottawanna (Rodd v. Heartt) supra (21 Wall. (U. S.) 577, 22 L. ed. 662), or that Congress could never change the status under the maritime law of seamen, who are peculiarly the wards of admiralty, or was powerless to enlarge or modify any remedy afforded to them within the scope of the admiralty jurisdiction. There is nothing in that grant of jurisdiction—which sanctioned our adoption of the system of maritime law—to preclude Congress from modifying or supplementing the rules of that law as experience or changing conditions may require. This is so at least with respect to those matters which traditionally have been within the cognizance of admiralty courts either because they are events occurring on navigable waters, see Waring v. Clarke, 5 How. (U. S.) 441, 12 L. Ed. 226, supra, *or because they are the subject matter of maritime contracts or relate to maritime services.*" (Emphasis ours.)

The Court then lays down the rule which makes for uniform operation as follows: (p. 42)

"The right of recovery in the Jones Act is given to the seamen as such, and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit *depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters.*"

It is significant that the Court used the term "seamen" and not "members of the crew" as distinguished from longshoremen. It is even more pertinent that the Court observed at the outset that the term "seamen" has been interpreted to embrace longshoremen. It must necessarily follow that the jurisdictional provision as it applies to "Seamen" covers all who fall within the scope of the term.

Before the longshoremen took over the job of handling the cargo, it was the duty of the ship's crew to perform the services on the pier as well as on the ship. The stevedore performs the same work and is just as much in the course of his employment on the pier as when he discharges his duties on the ship's deck. This is the criterion which determines the applicability of the Jones Act and not the fact that he may be standing in one spot or another at the time of the injury.

In connection with his wages, a stevedore has a lien against the vessel, not because of the place where those services were performed, but because of their maritime nature. "The Geo. T. Kemp" Fed. Case No. 5341. Moreover, even though a contract be made on land, if the subject matter concerns the navigation of the seas, it is a case of admiralty and maritime jurisdiction. As the Court said in the "Circassion", (supra), the stowage and landing of cargo form a necessary part of the contract of affreightment, without which no freight can be earned. That the stevedore is just as much in the course of his employment and engaged in a maritime service on the pier as he is on the deck of the vessel is hardly open to dispute. There can be no distinction in this respect between seamen who are members of the crew and those who are longshoremen, as the Supreme Court said in the Haverty case: (p. 52)

> "*We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship.* The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case, they should be in the other." (Italics supplied.)

THIRD POINT

A Longshoreman Injured on the Pier in the Course of His Employment Is a "Seaman", Governed by the Jones Act to the Exclusion of Any State Law.

The Courts below were by no means certain of the soundness of their conclusion. To reach that conclusion, they felt compelled to depart from the rule of reason to follow what they considered to be a binding precedent established by the *Smith* v. *Taylor* and *Nordenholt* cases. It is appropriate, therefore, to consider the facts and doctrines found in those decisions.

In the case of *Smith* v. *Taylor*, (*supra*), the suit was by the widow of a deceased longshoreman under the Louisiana Compensation Law, to recover compensation for herself and her children. An award under that Act was affirmed by the Louisiana Court of Appeals and affirmed by the Supreme Court of the United States. The facts were as follows: A sling of cargo was being swung from the vessel to a staging which rested solely upon the pier and projected a few feet over the water to or near the side of the vessel. The deceased was standing on the stage trying to steady the swinging slingful of cargo when it struck him and precipitated him into the water causing his death. After reciting the facts the Court states the issues and uses language which, at first blush, would seem to be diametrically opposed to the logic and rulings of the O'Donnell decision, as follows: (p. 181)

> "Deceased was engaged in maritime work under a maritime contract. If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated § 2 of Art. 3. But,

if the cause of action arose upon the land, the state law is applicable."

This position of the Court, however, is explained by the following excerpt which shows that the Court was merely accepting the issues as advanced by the parties: (p. 181-182)

> "Plaintiff in error *concedes* that the stage and wharf on which deceased was working are to be deemed an extension of the land * * * *and that the State law would apply if he had been injured or killed by falling on the landing place.* It argues that as no claim was made for injuries sustained while deceased was on land *and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction.*" (Emphasis ours.)

Thus, there was only one narrow issue which the Court recognized as having been advanced by the parties themselves, namely: Did the tort occur on land or on water? With this very issue in mind, the Court then goes on to say: (p. 182)

> "The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death * * * The substance and consummation of the occurrence which gave rise to the cause of action took place on land."

Significant also is the next and concluding sentence of the Court: (p. 182)

> "This case cannot be distinguished from Johnson v. Chicago Elevator Co., 119 U. S. 388, 30 L. Ed. 447."

This latter case cited by the Court illustrates clearly that the Court did not have in mind the Jones Act, for in that case the suit was to recover for damage done to a grain elevator on the pier by the swinging of a ship's boom. The tort there was held to be non-maritime and therefore the

State law applied. There was nothing else in that case to call for the application of the maritime law. By basing its decision on that case, the Court, in *Smith* v. *Taylor*, could not have considered any other factor which might have had a bearing. It may be that the Court could and should have considered the effect of the Jones Act, but it is amply clear that it did not do so. It is equally clear that its deliberations and decision were confined to the single issue, as advanced by the parties—Did the tort occur on the land or on water? Under these circumstances, it can hardly be inferred, as the Courts below did here, that *Smith* v. *Taylor* decided that the Jones Act did not apply to injuries sustained by longshoremen on shore. If such an inference were permitted, the same reasoning would compel the identical conclusion with respect to members of the crew. That such is not the case is no longer open to dispute. We think it is fair to state that *Smith* v. *Taylor* did not decide any of the issues here involved and should not have been considered as controlling.

The other case which the Courts below felt bound to follow is *State Industrial Commission* v. *Nordenholt*, 259 U. S. 263, 66 L. Ed. 933. In that case the longshoreman, on May 15, 1918, was injured on the dock while engaged in unloading the vessel and died of those injuries. The mother of the decedent applied to the State Compensation Commission, which rendered an award in her favor. It was set aside on appeal and certiorari was granted by the Supreme Court. This Court reversed upon the ground that the State law could validly be applied to injuries sustained on land by employees engaged in maritime service, *provided, however, that the State law did not conflict with any Federal rule.* (The accident there occurred in 1918—the Jones Act was passed in 1920.) Said the Court: (p. 275-276)

> "Isana was injured upon the dock, an extension of the land * * *, and certainly, prior to the Work

men's Compensation Act, the employer's liability for damages would have depended upon the common law and the state statutes. Consequently, when the Compensation Act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law."

* * * * * * *

"The stevedore's contract of employment did not contemplate any dominant Federal rule concerning the master's liability for personal injuries received on land. In Jensen's Case, rights and liabilities were definitely fixed by maritime rules, whose uniformity was essential. With these the local law came into conflict. *Here no such antagonism exists. There is no pertinent Federal statute; and application of the local law will not work material prejudice to any characteristic feature of the general maritime law.*"

Thus, the underlying reason which permitted the application of the State law was the fact that *there was no Federal law which could be applicable*. Prior to 1920, there was no remedy under the maritime law for an injury to a longshoreman on the dock. The State law was not, therefore, in conflict with any dominant Federal rule and the award by the Commission was, therefore, valid. We submit that this decision supports petitioner's argument. As to the instant case, the Jones Act was passed in 1920, two years after the Nordenholt decision. If the Jones Act had been in effect at the time of the accident in that case, the opposite conclusion would have been reached because there would then have been a dominant Federal rule which would have barred the application of any State law. The Jones Act, in 1920, gave a right of action for injuries on the pier where there had been no right of recovery before under the Federal law.

Reduced to simple terms, the issues involved here may thus be stated. The Jones Act applies to and includes

longshoremen as well as members of the crew (Haverty case); the Act applies to and includes injuries sustained on shore as well as aboard ship (O'Donnell case). Since the Longshoremen's and Harborworkers' Compensation Act does not include injuries sustained on shore, it necessarily follows that the longshoreman injured on shore has an unqualified right to proceed under the Jones Act to the exclusion of any State law. Since the Jones Act is applicable, any attempt to apply a State Compensation Law must necessarily be denied as invalid. *Northern Coal and Dock Company v. Strand*, 278 U. S. 142, 73 L. Ed. 232. In that case the Court said (p. 147):

> "We think it necessarily follows from former decisions that by the Merchant Marine Act—a measure of general application—Congress provided a method under which the widow of Strand might secure damages resulting from his death, and that no state statute can provide any other or different one. See Patrone v. M. P. Howlett, 237 N. Y. 394, 143 N. E. 232."

VI

Conclusion

The Courts below have rendered a decision which is in direct conflict with the applicable decisions of this Court. The decision works material prejudice to the maritime law and destroys its uniformity of application. It is respectfully submitted that the decisions of the lower courts should be reversed and the case remanded for trial on the merits under the maritime law as modified by the Jones Act.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

October Term, 1945.

No. 405

CHARLES SWANSON,
Petitioner,

v.

MARRA BROTHERS, INC.,
Respondent.

Brief in Opposition to Petition for Writ of Certiorari.

JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD,
1910 Packard Building,
Philadelphia 2, Pa.,
Counsel for Respondent.

International, 236 Chestnut St., Phila. 6, Pa.

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ARGUMENT.

A Stevedore Injured While Working on a Pier Is Only Entitled to Compensation Under the State Workmen's Compensation Act and Has No Remedy Against His Employer Under the Jones Act.

It has been well established for years by decisions of your Honorable Court that when a stevedore or longshoreman is injured while working on a pier, his recovery is under the local state workmen's compensation act.

This very question was decided in *State Industrial Commission of the State of New York v. Nordenholt Corporation*, 259 U. S. 263 (1922). In that case the plaintiff's son died from injuries which he received as a longshoreman while working on the pier in the unloading of a vessel which was lying in navigable waters. This Court held that the New York Compensation Act was applicable.

The rule enunciated in the *Nordenholt* case was subsequently reaffirmed in *T. Smith & Son, Inc. v. Taylor*, 276 U. S. 179 (1928). In each case, the decedent longshoreman was injured while working on a pier, but in the *Smith* case, the longshoreman was knocked into the water where he was later found dead. In the *Smith* case the plaintiff-in-error attempted to distinguish the *Nordenholt* case (which clearly was controlling) on the ground that in the *Nordenholt* case the death occurred on land while in the *Smith* case it occurred in the water. However, this distinction was not adopted by your Honorable Court which held that the plaintiff's remedy was exclusively under the Louisiana Workmen's Compensation Act.

The rulings in the *Nordenholt* and *Smith* cases state what has always been the accepted understanding of the law. This principle has been uniformally applied by trial and appellate courts without exception and has been reaffirmed on numerous occasions by your Honorable Court.

In *Noguicira v. New York, New Haven & Hartford R. Co.*, 281 U. S. 128 (1930), this Court said on page 133:

> "In *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263, a longshoreman was injured on a dock while engaged in unloading a vessel. It was decided that in such a case, where the injury took place on an extension of the land, the maritime law did not prescribe the liability and the local law had always governed. The Workmen's Compensation Law of the State was accordingly held to be applicable. The distinction was thus maintained between injuries on land and those which were suffered by persons engaged in maritime employment on a vessel in navigable waters."

In *South Chicago Coal and Dock Co. v. Bassett*, 309 U. S. 251 (1940), this Court recently stated the following pertinent proposition as settled law:

> ". . . We had held that one engaged as a stevedore in loading a ship lying in port in navigable waters was performing a maritime service and that the rights and liabilities of the parties were matters within the admiralty jurisdiction. *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52. But the Court had also held that in the case of a longshoreman who was injured on the land, although engaged in unloading a vessel, the local law governed and hence the workmen's compensation law of the State applied. *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263. *The distinction had thus been maintained between injuries on land and those suffered by persons engaged in maritime employment on a vessel in navigable waters.*" (pp. 255, 256.) (Italics ours.)

See also *Minnie v. Port Huron Terminal Co.*, 295 U. S. 647, 648 (1935), and *The Admiral Peoples*, 295 U. S. 649, 651 (1935), in which the *Nordenholt* and *Smith* cases were again cited with approval.

Thus the District Court properly granted the respondent's Motion to Dismiss, for, as Judge Bard said in his opinion in this case, after having discussed the *Nordenholt* and *Smith* cases:

> "These decisions would appear to be directly applicable to and controlling of the case at bar." (R. 11.)

Although this Court in *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943), has recently held that a seaman, when injured on a pier, may sue the shipowner under the Jones Act, (Act of June 5, 1920, c. 250, § 33, 41 Stat. 1007; 46 U. S. C. A. § 688) that decision has not changed the rights and remedies of a longshoreman as enunciated in the *Nordenholt* and *Smith* cases.

It was never the intention of Congress to accord to longshoremen any rights under the Jones Act, and especially, to longshoremen *injured on a pier*.[1] The petitioner errs in interpreting the case of *International Stevedoring Company v. Haverty*, 272 U. S. 50 (1926), to hold that a longshoreman is a "seaman" within the meaning of the Jones Act, and from that premise to argue that, like the seaman in *O'Donnell v. Great Lakes Dredge & Dock Co.*, *supra*, a longshoreman may maintain an action under the

[1] The lower court cases cited by petitioner as authority to the contrary are not in point. In two of them the stevedore was permitted to recover against the vessel or its owner—*The Canada*, 7 Fed. 119 (1881) (lien against the vessel for wages) and *Sieracki v. Seas Shipping Co.*, 149 F. (2) 98 (C. C. A. 3rd, 1945) (damages from the shipowner for breach of warranty of seaworthiness). These cases are both irrelevant to the issue in the instant case which concerns solely the liability of the stevedore's employer and not the vessel or its owner. The third case—*McCahan Sugar Refining Co. v. Stoffel*, 41 F. (2d) 651 (C. C. A. 3rd, 1930)—involves an injury to a longshoreman *when on a vessel*. The accident in that case occurred prior to the enactment of the Longshoremen's and Harbor Workers' Act, and the court merely followed the ruling in the *Haverty* case, which is hereinafter fully analyzed on pages 4 to 6, both as to the reason for the decision and the extent thereof.

Although Judge Benedict stated in *The Circassian*, 1 Ben. 209 (1867), that the work done by stevedores was once performed by members of the crew, that was many years ago. Times have changed, and the reason for any rule ceases when the conditions which gave rise to it originally have been dissipated by the changes necessitated by our modern industrial progress. Today stevedores are landworkers, employed by local concerns, and do not share any of the risks or vicissitudes of seamen. Barbers once rendered medical services, but no one today would say that barbers would be included in any statutory group designated as "physicians".

Jones Act, even though his injuries were sustained on a pier.

The circumstances leading to the amendments to Section 24 of the Judicial Code in 1917 (Act of October 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3)) and in 1922 (Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3)), the passage of the Jones Act in 1920, and the enactment of the Longshoremen's and Harbor Workers' Compensation Act in 1927 (Act of March 4, 1927, c. 509; 33 U. S. C. A. § 901 et seq.), as well as the cases construing these statutes, all show that the Jones Act was never intended to apply to longshoremen.

Stevedores and longshoremen, whether injured on a vessel or on a pier, had first received compensation for injuries exclusively through the workmen's compensation statute of the state where employed. In 1917 this Court held that only Congress could legislate concerning rights of stevedores injured on navigable waters and that such injuries were not within the jurisdiction of the state compensation acts. *Southern Pacific Co. v. Jensen*, 244 U. S. 205 (1917). Congress then amended its statute relating to admiralty and maritime jurisdiction by adding a clause referring to rights and remedies under the workmen's compensation law of any state. Act of Oct. 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3). This amendment was declared unconstitutional in *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149 (1920). The statute was again amended with a different wording. Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3). This Court again in 1924 declared this subsequent amendment unconstitutional. *State of Washington v. Dawson & Co.*, 264 U. S. 219 (1924); *Industrial Accident Commission v. James-Rolph Co.*, 264 U. S. 219 (1924).

Thus from 1917, a longshoreman who was injured on a vessel did not have the benefit of any compensation statute (which remedy was applicable if injured on a pier) nor did he have the benefit of any statute which would deprive his

employer in a suit at law of the defense of contributory negligence and assumption of risk, although in 1920 Congress had granted to seamen such additional rights under the Jones Act.

Under these circumstances, this Court, feeling that a stevedore *injured on a vessel* should generally have as much protection as a seaman injured on a vessel, adopted in 1926 an artificial definition of a "seaman" by including in that classification *a stevedore injured when working on a vessel*, and by such "judicial legislation" permitted such a stevedore to recover under the Jones Act for an injury sustained on the vessel. *International Stevedoring Co. v. Haverty*, 272 U. S. 50 (1926).

Not only was the *Haverty* case criticized as contrary to the intent of Congress[2] but in the following year, less than six months after that decision, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act under which a system of compensation was established for stevedores injured while working on navigable waters and which, by its very terms, was integrated with local state workmen's compensation acts by providing in section three that it was limited to cases where recovery through workmen's compensation proceedings could "not validly be provided by State law" 33 U. S. C. A. § 903. Thus, stevedores had finally achieved a system of compensation—irrespective of negligence—for injuries received on navigable waters as well as on land. Since that time a stevedore who is injured on navigable waters has been given compensation exclusively under the Longshoremen's and Harbor Workers' Act, *Nogueira v. New York, New Haven & Hartford R. R. Co.*, 281 U. S. 128 (1930); while a stevedore who is injured on the pier is limited to recovery under the state workmen's compensation act. *Johnston v. Marshall*, 128 F. (2d) 13 (C. C. A. 9th, 1942), cert. den. 317 U. S. 629 (1942).

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[2] (1926) 26 Columbia L. Rev. 211. Robinson, *Admiralty* (1939) 320; Robinson *The Seaman in American Admiralty Law* (1936) 16 Boston Univ. L. Rev. 283 at 308.

It is significant that Congress failed to include seamen in the Longshoremen's and Harbor Workers' Act, for that would have been the natural thing to do if Mr. Justice Holmes had been correct in his statement in the *Haverty* case that Congress intended to include stevedores in the classification of seamen in the Jones Act.[3] Such was the opinion of Judge Coleman in *Obrecht-Lynch Corporation v. Clark*, 30 F. (2d) 144, 146, 147 (D. C. Md. 1929). See also *Robinson on Admiralty*, page 320.

Thus it is evident that Congress never intended to include stevedores within the classification of "seamen" when it enacted the Jones Act and that the law as enunciated in the *Nordenholt* and *Smith* cases is still applicable.

Petitioner argues that since the accident in the *Nordenholt* case occurred in 1918, two years before the Jones Act, that case is not controlling. The petitioner, however, fails to consider that, as we have hereinbefore set forth, this Court has many times *since the enactment of the Jones Act* cited the *Nordenholt* case not only with approval but also as authority for the proposition that stevedores injured on the pier are compensated under the applicable state workmen's compensation act.

While the petitioner admits that the objection raised as to the *Nordenholt* case is not applicable to the case of *T. Smith & Son, Inc. v. Taylor, supra*, which was decided subsequent to the enactment of the Jones Act, his argument that the *Smith* case is inapplicable is summarized in these words:

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[3] The Merchant Marine Act of 1920, (Act of June 5, 1920, c. 250; 46 U. S. C. A. §§ 13, 597, 599, 688, 802-806, 808, 812-813, 861-889, 911, 921-927, 941, 951-954, 991, 974-975, 981-984), of which the Jones Act is Section 33, expressly refers to both stevedores and seamen. In Section 30 of the Merchant Marine Act of 1920 stevedores are twice mentioned in express terms with reference to liens. Act of June 5, 1920, c. 250, § 30, 41 Stat. 1002, 1004; 46 U. S. C. A. §§ 924, 954. Congress would undoubtedly have mentioned stevedores specifically in Section 33 if it had intended to include them under the Jones Act. This interpretation is further substantiated by a later report of the Judiciary Committee of the Senate in connection with legislation concerning stevedores and state compensation statutes, which report was presented by the late Senator Borah under date of June 6, 1921, and designated Report No. 94, 67th Congress, First Session.

"It may be that the Court could and should have considered the effect of the Jones Act, but it is amply clear that it did not do so." (Petitioner's brief, pp. 31-32.)

The record in the *Smith* case shows exactly the contrary to be the case and that this Court at that time undoubtedly considered at length the effect of the Jones Act, even though the opinion made no specific reference to the statute. When the *Smith* case was argued before your Honorable Court, not only the plaintiff-in-error[1] but also the defendant-in-

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[1] Under "Grounds for Invoking this Court's Jurisdiction," the plaintiff-in-error stated on page 3 of its brief:

"The Court below further erred in not finding that the principles applicable to a recovery for a maritime injury are limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St., Section 8337a), which statute is exclusive of all State statutes upon the same subject matter, and therefore further erred in taking jurisdiction *rationae materiae* of a suit in which no maritime relief is asked."

Under "Cases in Support of this Court's Jurisdiction," the plaintiff-in-error stated on page 6 of its brief as follows:

"Principles applicable to a recovery for a maritime injury must be limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St., Section 8337a).

Messel v. Foundation Co., Adv. Sheets, Supreme Court Reporter, July 1, 1927, p. 695.

A stevedore is a seaman within the meaning of Act of March 4, 1915, c. 153, St. 1185, as amended by Sec. 33 of Act of June 5, 1920, c. 250, 40 St. 1007 (Comp.) St. An. Supp. 1923, p. 8337a.

International Stevedoring Co. v. Haverty, Adv. Sheets, Supreme Court Reporter, Nov. 1, 1926, p. 19.

The Act of June 5, 1920, supra, is exclusive of all State statutes upon the same subject matter.

Panama R. Co. v. Johnson, 264 U. S., 375."

In its Specifications of Error, the plaintiff-in-error made the following statement on page 10 of its brief:

"4th. The Court below erred in not holding that the right of action, if any, in this case is governed by the maritime law, including the Act of March 4, 1915, Section 20, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007 (Comp. Stat., Par. (8337a), and that such act is exclusive of all State laws upon the same subject matter."

While in its argument, the plaintiff-in-error on page 13 of its brief conceded that a stevedore injured upon the land is limited to recovery under the state compensation law (which, we submit, is a correct statement of the law), the plaintiff-in-error did make the following statement in the summation of the ten points of its argument on page 38:

"10th. Any claims that defendant in error might have, therefore, must be confined within the principles applicable to a maritime injury, including

error argued the applicability of the Jones Act. In fact, it seems to us from the record in that case that much of the defense of the stevedore company (which undoubtedly would have been able to prove that it was not negligent, if sued under the Jones Act) and the foundation of its argument to this Court was to the effect that the plaintiff's remedy, if any, was confined to the Jones Act and not to the Louisiana Workmen's Compensation Act. The *Smith* case, therefore, is controlling in this case, notwithstanding the petitioner's attempt to demonstrate otherwise.

Finally, this Court in *O'Donnell v. Great Lakes Dredge & Dock Co.*, supra at page 43, not only specifically stated that said decision was not to be interpreted as extending the rights under the Jones Act to longshoremen but also cited those authorities to which we have already averted as an indication that, if and when such a question might be presented, this Court would be bound by its previous decisions in the *Nordenholt* and *Smith* cases.

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the applicable section of the Federal Employer's Liability Act, incorporated in maritime law by Act of June 5, 1920, *Section 33* (*Comp. St., Sec. 8337a*) and the Court below erred in assuming jurisdiction at all of this suit brought solely under the Louisiana Compensation Law, and doubly erred in rendering judgment under the unconstitutional provisions of that law."

In the "Summary of the Argument," the defendant-in-error stated the following proposition on pages 6 and 7 of her brief:

"4. The 'Jones Act,' Section 20 of Act of Congress of March 4, 1915, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007, is not applicable to the case at bar as said Act *applies only to seamen and stevedores engaged on a ship.*

International Stevedoring Co. v. Haverty, 272 U. S. 50 (Decided Oct. 18, 1926)."

(Italics are those of defendant-in-error.)

The defendant-in-error in answering the plaintiff-in-error's Fifth Assignment of Error (in which it was contended that the Jones Act was applicable and exclusive of state statutes) made the following argument on page 23 of her brief:

"The 'Jones Act' is entitled, 'An Act to promote the welfare of American Seamen in the Merchant Marine of the United States. . . . In the case of *International Stevedoring Co. v. Haverty, 272 U. S. 50, 47 Supreme Court Reporter, 19*, decided Oct. 18, 1926, the plaintiff, a longshoreman, was injured upon a vessel while *engaged in stowing freight in the hold*. In the cited case, this court held that in said statute the word 'seamen' is to be taken to include stevedores '*engaged as the plaintiff was.*' In the case at bar, the Defendant in Error's husband was not engaged as the plaintiff was in the *Haverty* case, but was engaged solely on the wharf. Therefore, we submit, that, the 'Jones Act' has no application to the case at bar, and the Defendant in Error would have no right to make the election permitted by said Act". (Italics are those of defendant-in-error.)

CONCLUSION.

We, therefore, submit that the petitioner's effort to distinguish the *Nordenholt* and *Smith* cases and to have the petitioner held a seaman under the *Haverty* case is without legal justification. The courts below properly sustained the respondent's Motion to Dismiss (R. 9, 16). To rule otherwise, after stevedores had achieved a uniform system of recovery under workmen's compensation laws (the state compensation act, if injured on land; the Longshoremen's and Harbor Workers' Act, if injured on navigable waters) would result to the disadvantage of stevedores in general, for then the question of what, if anything, a stevedore could recover would depend *in reality* on the place where the injury occurs. Under petitioner's contention, the stevedore if injured on a vessel would always obtain a recovery under the Longshoremen's and Harbor Workers' Act, but if injured on a pier, he could not recover unless he proved that his employer was negligent. Thus the system of compensation which has been established and in force during the past eighteen years would be destroyed. This system of compensation is a sound one; and there is no reason in principle why this system should be destroyed.

Counsel has observed the trend of decisions extending to seamen, when possible, the benefits of social legislation. However, in situations like this case stevedores would not be benefited if it were to be decided that the Jones Act was applicable when they are injured on a pier. The result would be exactly the opposite. Stevedores already have the benefit of state workmen's compensation statutes—social legislation enacted for their benefit—whereby recovery is predicated on the injury occurring in the course of employment and not on negligence. The petitioner has an adequate remedy for his injury since, as set forth in respondent's Motion to Dismiss, he has already been receiving compensation under The Pennsylvania Workmen's Compensation Act. Act of June 21, 1939, P. L. 520; 77 P. S. § 1 et seq. (R. 5-9). Economically and socially it would be a step backward if

this system, so successful through the past decades, were to be destroyed, for then a stevedore, when injured on the pier, would be required to prove negligence before his employer could be held liable.

Neither Congress nor this Court ever intended a longshoreman when injured on a pier to recover damages under the Jones Act. The longshoreman, when so injured, is accorded exclusive relief under the local state workmen's compensation act.

The petition for writ of certiorari should be denied.

Respectfully submitted,

JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD,
Counsel for Respondent.

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IN THE

Supreme Court of the United States

October Term, 1945.

No. 405.

CHARLES SWANSON,
Petitioner,

v.

MARRA BROTHERS, INC.,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Brief for Respondent.

JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD,
1910 Packard Building,
Philadelphia 2, Pa.,
Counsel for Respondent.

International, 236 Chestnut St., Phila. 6, Pa.

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IN THE

Supreme Court of the United States.

October Term, 1945.

No. 405.

CHARLES SWANSON,

Petitioner,

v.

MARRA BROTHERS, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT.

This case comes before the Court on writ of certiorari issued to review a final judgment of the United States Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW.

The opinion of the District Court of the United States for the Eastern District of Pennsylvania sur respondent's Motion to Dismiss Complaint was filed by the Honorable Guy K. Bard on October 16, 1944 (R. 9) and is reported in 57 F. Supp. 456.[1]

[1] Petitioner on page 3 of his brief states under "The Opinions of the Courts Below" that "The Court" (Judge Bard) "recognized that longshoremen must be construed as seamen within the meaning of the Jones Act.". We do not so read Judge Bard's opinion. In the two places where this particular phase of the case was discussed by Judge Bard, he used the following language:

"Following the passage of the Jones Act in 1920, the Supreme Court held that a stevedore employed in maritime

The opinion of the United States Circuit Court of Appeals for the Third Circuit was filed on June 13, 1945 (R. 18) and is reported in 149 F. (2d) 646. Said opinion, which affirmed the judgment of the Court below for the reasons set forth in the aforesaid opinion of Judge Bard, was a per curiam opinion of Circuit Judge Martin, Circuit Judge McLaughlin, and District Judge Kalodner.

JURISDICTION.

The jurisdiction of this Court has been invoked by petitioner under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. § 347-(a)) and Article III, Section 2 of the Constitution of the United States.

COUNTER-STATEMENT OF QUESTION PRESENTED.

The petitioner in his Specifications of Error assigns five errors and presents three points in his Argument. We think that there is only one point in this case and that the following Counter-Statement of Question Presented covers the sole issue in controversy:

Where a stevedore is injured while working on a pier, is not his right of recovery against his employer limited exclusively to compensation payable under the state workmen's compensation act?

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work *on navigable water*' was a 'seaman' within the meaning of the Act. International Stevedoring Co. v. Haverty, 272 U. S. 50, 71 L. Ed. 157." (Italics ours.) (R. 12.)

"That the Supreme Court recognized that a distinction may well be made between a seaman who is a crew member and is traditionally entitled to maintenance and cure under the maritime law, and a longshoreman who has been construed to be a 'seaman' under the Jones Act, *at least to the extent that he works on navigable water*, is obvious from its final remarks in its opinion in the O'Donnell case. . . ." (Italics ours.) (R. 15.)

SUMMARY OF ARGUMENT.

A stevedore injured while working on a pier is only entitled to compensation under the local state workmen's compensation act and has no remedy against his employer under the Jones Act.

This precise question has been well established by decisions of this Court. *State Industrial Commission of the State of New York v. Nordenholt Corporation*, 259 U. S. 263 (1922); *T. Smith & Son, Inc. v. Taylor*, 276 U. S. 179 (1928); *Nogueira v. New York, New Haven & Hartford R. Co.*, 281 U. S. 128, 133 (1930); *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251 (1940).

Congress never intended to extend to stevedores any rights under the Jones Act. Although this Court in the case of *International Stevedoring Company v. Haverty*, 272 U. S. 50 (1926) held that a stevedore *when injured on a vessel* could maintain a suit under the Jones Act, the decision was made because of the then existing lack of effective federal legislation for stevedores *injured on a vessel*, and furthermore said decision was contrary to the intent of Congress. The "judicial legislation" of the *Haverty* case did not extend such a right to stevedores *when injured on a pier* since they already had the protection of state compensation acts. Furthermore, Congress by the enactment of the Longshoremen's and Harbor Workers' Act shortly after the *Haverty* case showed that it never intended stevedores to be included within the coverage of the Jones Act.

Since stevedores have no right under the Jones Act, the case of *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943), which permitted a seaman to recover under the Jones Act for injuries sustained on a pier, has no application to instant case.

ARGUMENT.

I. A Stevedore Injured While Working on a Pier Is Only Entitled to Compensation Under the State Workmen's Compensation Act and Has No Remedy Against His Employer Under the Jones Act.

It has been well established for years by decisions of your Honorable Court that when a stevedore or longshoreman is injured while working on a pier, his recovery is under the local state workmen's compensation act.

As the facts set forth in petitioner's Complaint fall squarely within the holdings of these decisions, the Courts below properly sustained the respondent's Motion to Dismiss.

The petitioner, a longshoreman, was injured while he was working on the pier at which the SS. Meyer London was berthed. (R. 2.) He was engaged in hooking or unhooking cases which were being hoisted to the deck of the vessel. (R. 2.) A life raft became loosened from its moorings and fell down over the ship's railing to the pier below, striking the plaintiff who was stationed on the pier. (R. 2.) Thus, there can be no question from the petitioner's allegations contained in his Complaint that, when injured, the petitioner was working on the pier as distinguished from working on the vessel.

Furthermore, as stated in the affidavit attached to the Motion to Dismiss (which was not denied or contradicted), the petitioner pursuant to the provisions of The Pennsylvania Workmen's Compensation Act (Act of June 21, 1939, P. L. 520; 77 P. S. § 1 et seq.) entered into an open compensation agreement with his employer (the respondent herein) and its insurance carrier for the maximum compensation. (5a.) Said agreement was duly filed with and approved by the State Bureau of Workmen's Compensation as required by said statute and became binding on all parties. The petitioner at the time of the within proceedings was still

receiving compensation thereunder and no proceedings were instituted to modify or terminate the same. (6a.)

(a) The Question Presented Has Already Been Adjudicated by Well-Established Decisions of This Court.

The very question now raised by the petitioner was decided by your Honorable Court in the case of *State Industrial Commission of the State of New York v. Nordenholt Corporation*, 259 U. S. 263 (1922). In that case the plaintiff's son died from injuries which he received as a longshoreman while working on the pier and engaged in unloading a vessel which was lying in navigable waters. Your Honorable Court held that when an employee engaged in unloading a vessel was injured on the pier, the local law, the New York Compensation Act, was applicable to the case, and said:

> "When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land." (pp. 272, 273.)
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> "Insana was injured upon the dock, an extension of the land, *Cleveland Terminal & Valley R. R. Co. v. Cleveland S.S. Co.*, 208 U. S. 316, and certainly prior to the Workmen's Compensation Act the employer's liability for damages would have depended upon the

common law and the state statutes. Consequently, when the Compensation Act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law." (pp. 275, 276.)

This rule of the *Nordenholt* case was subsequently reaffirmed in *T. Smith & Son, Inc., v. Taylor*, 276 U. S. 179 (1928). In the *Smith* case a stevedore was engaged in unloading cargo. While standing upon a stage which was resting on the wharf, he was struck by a sling which was loaded with cargo and which was attached to the vessel. He was knocked into the water, where some time later he was found dead. The stevedoring company argued that the deceased was engaged in a maritime occupation when he was knocked from the wharf and that, therefore, he had no rights under the Louisiana Workmen's Compensation Act because it was an invasion of the admiralty jurisdiction and that the plaintiff's remedy was under federal law and not under the state workmen's compensation act. The Court, however, rejected this argument and affirmed the principle that the state workmen's compensation act is applicable if the injury to the stevedore occurs on land. The Court said on page 181:

"Deceased was engaged in maritime work under a maritime contract. If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated § 2 of Art. 3. But, if the cause of action arose upon the land, the state law is applicable. *The Plymouth*, 3 Wall. 20, 33; *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52, 59; *Southern Pacific Co. v. Jensen*, 244 U. S. 205; *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149; *Washington v. Dawson & Co.*, 264 U. S. 219."

The stevedoring company in the *Smith* case tried to distinguish the *Nordenholt* case on the ground that the death in that case had occurred on the pier, whereas the death in the *Smith* case occurred in the river from drowning. This distinction was brushed aside by your Honorable Court as being without merit, saying:

> "It" (the stevedoring company) "argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction. But this is a partial view that cannot be sustained. The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death. The *G. R. Booth*, 171 U. S. 450, 460. The substance and consummation of the occurrence which gave rise to the cause of action took place on land." (Page 182.)

The rulings in the *Nordenholt* and *Smith* cases state what has always been the accepted understanding of the law. This principle has been uniformly applied by trial and appellate courts without exception and has been reaffirmed on numerous occasions by your Honorable Court, of which *Nogueira v. New York, New Haven & Hartford R. Co.*, 281 U. S. 128 (1930), and *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251 (1940) are examples.

In the *Nogueira* case, the plaintiff was employed by the defendant railroad as one of a gang of freight handlers in the loading of freight into cars on a float which was lying in the East River. The plaintiff was injured while working on the float, and thereafter instituted suit under the Federal Employers' Liability Act (45 U. S. C. A. § 51 et seq.), but the complaint was dismissed on the ground that the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. A. § 901 et seq.) applied. This Court, in affirm-

ing this decision, specifically cited the *Nordenholt* case with approval, saying, on page 133:

> "In *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263, a longshoreman was injured on a dock while engaged in unloading a vessel. It was decided that in such a case, where the injury took place on an extension of the land, the maritime law did not prescribe the liability and the local law had always governed. The Workmen's Compensation Law of the state was accordingly held to be applicable. The distinction was thus maintained between injuries on land and those which were suffered by persons engaged in maritime employment on a vessel in navigable waters."

In *South Chicago Coal & Dock Co. v. Bassett, supra*, this Court recently stated the following pertinent proposition as settled law:

> " . . . We had held that one engaged as a stevedore in loading a ship lying in port in navigable waters was performing a maritime service and that the rights and liabilities of the parties were matters within the admiralty jurisdiction. *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52. But the Court had also held that in the case of a longshoreman who was injured on the land, although engaged in unloading a vessel, the local law governed and hence the workmen's compensation law of the State applied. *State Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263. *The distinction had thus been maintained between injuries on land and those suffered by persons engaged in maritime employment on a vessel in navigable waters.*" (pp. 255, 256.) (Italics ours.)

See also *Minnie v. Port Huron Terminal Co.*, 295 U. S. 647, 648 (1935), and *The Admiral Peoples*, 295 U. S. 649, 651 (1935), in which the *Nordenholt* and *Smith* cases were again cited with approval.

Thus the District Court properly granted the respondent's Motion to Dismiss, and the Circuit Court of Appeals properly affirmed that ruling, for, as Judge Bard said in his opinion in this case, after having discussed the *Nordahalt* and *Smith* cases:

> "These decisions would appear to be directly applicable to and controlling of the case at bar." (R. 14.)

Although this Court in *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943), has recently held that a seaman, when injured on a pier, may sue the shipowner under the Jones Act,[2] (Act of June 5, 1920, c. 250, § 33, 41 Stat. 1007; 46 U. S. C. A. § 688) that decision has not changed the rights and remedies of a longshoreman as enunciated in the *Nordahalt* and *Smith* cases.

(b) Congress Never Intended to Extend to Stevedores Any Rights Under the Jones Act.

It was never the intention of Congress to accord to longshoremen any rights under the Jones Act, and especially, to longshoremen *injured on a pier*.[3] The petitioner

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[2] The Jones Act (which is Section 33 of The Merchant Marine Act of 1920) provides as follows:

"Any *seaman* who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any *seaman*. . . . all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." (Italics ours.)

[3] The lower court cases cited by petitioner as authority to the contrary are not in point. In two of them the stevedore was permitted to recover against the vessel or its owner—*The Canada*, 7 Fed. 119 (1881) (lien against the

errs in interpreting the cases of *International Stevedoring Company v. Haverty*, 272 U. S. 50 (1926), and *Uravich v. Jarka Co.*, 282 U. S. 234 (1931), to hold that a longshore-

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vessel for wages) and *Sieracki v. Seas Shipping Co.*, 149 F. (2) 98 (C. C. A. 3rd, 1945) (damages from the shipowner for breach of warranty of seaworthiness). These cases are both irrelevant to the issue in the instant case which concerns solely the liability of the stevedore's employer and not the vessel or its owner. Moreover, certiorari has been granted in *Sieracki v. Seas Shipping Co.*—U. S.—(October Term, 1945, No. 365), and that case is now under review. The third case—*McCahan Sugar Refining Co. v. Staffel*, 41 F. (2d) 651 (C. C. A. 3rd, 1930)—involves an injury to a longshoreman *when on a vessel*. The accident in that case occurred prior to the enactment of the Longshoremen's and Harbor Workers' Act, and the court merely followed the ruling in the *Haverty* case, which is hereinafter fully analyzed on pages 11 to 17, both as to the reason for the decision and the extent thereof.

Although Judge Benedict stated in *The Circassian*, 1 Ben. 209 (1867), that the work done by stevedores was once performed by members of the crew, that was many years ago. Times have changed, and the reason for any rule ceases when the conditions which gave rise to it originally have been dissipated by the changes necessitated by our modern industrial progress. Today stevedores are land-workers, employed by local concerns, and do not share any of the risks or vicissitudes of seamen. Barbers once rendered medical services, but no one today would say that barbers would be included in any statutory group designated as "physicians". Congress in its various enactments has recognized this distinction. For example, it has extended the benefits of the United States Marine hospitals to seamen, but not to stevedores. Stevedores are subject to the Fair Labor Standards Act, but seamen are exempt (29 U. S. C. A. § 213).

[1] This decision is of no particular significance in this case because it concerned the right of a stevedore who met his death in 1926 while working on a German vessel and this Court merely applied the holding of the *Haverty* case—the accident having occurred prior to the enactment of the Longshoremen's and Harbor Workers' Act. Practically

man is a "seaman" within the meaning of the Jones Act, and from that premise to argue that, like the seaman in *O'Donnell v. Great Lakes Dredge & Dock Co., supra*, a longshoreman may maintain an action under the Jones Act, even though his injuries were sustained on a pier.

The circumstances leading to the amendments to Section 24 of the Judicial Code in 1917 (Act of October 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3)) and in 1922 (Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3)), the passage of the Jones Act in 1920, and the enactment of the Longshoremen's and Harbor Workers' Compensation Act in 1927 (Act of March 4, 1927, c. 509; 33 U. S. C. A. § 901 et seq.), as well as the cases construing these statutes, all show that the Jones Act was never intended to apply to longshoremen.

Stevedores and longshoremen, whether injured on a vessel or on a pier, had first received compensation for injuries exclusively through the workmen's compensation statute of the state where employed. In 1917 this Court held that only Congress could legislate concerning rights of stevedores injured on navigable waters and that such injuries were not within the jurisdiction of the state compensation acts. *Southern Pacific Co. v. Jensen*, 244 U. S. 205 (1917). Congress then amended its statute relating to admiralty and maritime jurisdiction by adding a clause referring to rights and remedies under the workmen's compensation law of any state. Act of Oct. 6, 1917, c. 97, § 1; 40 Stat. 395; 28 U. S. C. A. § 41 (3). This amendment was declared unconstitutional in *Knickerbocker Ice Co. v. Stewart*, 253 U. S 149 (1920) The statute was again amended with a different wording. Act of June 10, 1922, c. 216, § 1; 42 Stat. 634; 28 U. S. C. A. § 41 (3). This Court again in 1924 declared this subsequent amendment unconstitutional. *State of Washington v. Dawson & Co.*, 264

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the sole question involved was whether this right was limited to injuries *on American vessels* or extended to injuries *on foreign vessels*.

U. S. 219 (1924); *Industrial Accident Commission v. James Rolph Co.*, 264 U. S. 219 (1924).

Thus from 1917, a longshoreman who was injured on a vessel did not have the benefit of any compensation statute (which remedy was applicable if injured on a pier) nor did he have the benefit of any statute which would deprive his employer in a suit at law of the defense of contributory negligence and assumption of risk, although in 1920 Congress had granted to seamen such additional rights under the Jones Act.

Under these circumstances, this Court, feeling that a stevedore *injured on a vessel* should generally have as much protection as a seaman injured on a vessel, adopted in 1926 an artificial definition of a "seaman" by including in that classification *a stevedore injured when working on a vessel*; and by such "judicial legislation" permitted such a stevedore to recover under the Jones Act for an injury sustained on the vessel. *International Stevedoring Co. v. Haverty*, 272 U. S. 50 (1926).

Mr. Justice Holmes in that decision stated:

> "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But the words are flexible. . . . We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship." (p. 52.)

Notwithstanding the aforesaid statement of Mr. Justice Holmes, the *Haverty* case not only was criticized as contrary to the intent of Congress [5] but in the following year, less than six months after that decision, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act under which a system of compensation was established for

[5] (1926) 27 Columbia L. Rev. 211; Robinson; *Admiralty* (1939) 320; Robinson, *The Seaman in American Admiralty Law* (1936), 16 Boston L. Rev. 283 at 308.

stevedores injured while working on navigable waters and which, by its very terms, was integrated with local state workmen's compensation acts by providing in section three that it was limited to cases where recovery through workmen's compensation proceedings could "not validly be provided by State law" 33 U. S. C. A. § 903.

It is interesting to observe that prior to its final enactment Congress gave considerable thought as to whether "seamen" *by specific reference* should be included in that statute. See the comments of Mr. Chief Justice Hughes in *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251, 256 (1940):

> ". . . The bill, which became the Longshoremen's and Harbor Workers' Compensation Act, was at one stage amended so as to include a master and members of a crew of a vessel owned by a citizen of the United States. They preferred however to remain outside the compensation provisions and thus to retain the advantages of their election under the Jones Act, and the bill was changed accordingly so as to exempt 'seamen'. Then, in its final passage, the words 'a master or member of a crew' were substituted for 'seamen'." (pp. 256-257.)

Mr. Chief Justice Hughes then pointed out the importance in this change of language:

> "We think that this substitution has an important significance here. For we had held that *longshoremen engaged on a vessel* at a dock in navigable waters, in the work of loading or unloading, were 'seamen.' *International Stevedoring Co. v. Haverty*, 272 U. S. 50; *Northern Coal Co. v. Strand*, 278 U. S. 142. And, also, that such seamen if injured on a vessel in navigable waters, *unlike one injured on land*, could not have the benefit of a state workmen's compensation act *Southern Pacific Co. v. Jensen*, 244 U. S. 205. We think it is clear that Congress in finally adopting the phrase 'a

master or member of a crew' in making its exception, intended to leave entitled to compensation all those various sorts of longshoremen and harbor workers who were performing labor on a vessel and to whom state compensation statutes were inapplicable." (p. 257.) (Italics ours.)

Thus, Congress by the enactment of the Longshoremen's and Harbor Workers' Act, had done exactly what Mr. Justice Holmes was unwilling to believe should be the case, for by that statute Congress varied the protection of maritime workers according to the accident of their employment. The statute, as finally enacted, set up a system of compensation for stevedores who were injured *while working on navigable waters*, and provided that if an employer secured payment of compensation as required by that Act, his liability under the Act should be exclusive and in place of all other liability. Thus, stevedores had finally achieved a system of compensation—irrespective of negligence—for injuries received on navigable waters as well as on land. Since that time a stevedore who is injured on navigable waters has been given compensation exclusively under the Longshoremen's and Harbor Workers' Act. *Noguiera v. New York, New Haven & Hartford R. R. Co.*, 281 U. S. 128 (1930); see also *Doll v. Scott Paper Co.*, 91 F. (2d) 860, 862, (C. C. A. 3rd, 1937); while a stevedore when injured on the pier is limited to recovery under the state workmen's compensation act. *Johnston v. Marshall*, 128 F. (2d) 13 (C. C. A. 9th, 1942), cert. den. 317 U. S. 629 (1942).

It is significant that Congress failed to include seamen in the Longshoremen's and Harbor Workers' Act, for that would have been the natural thing to do if Mr. Justice Holmes had been correct in his statement in the *Haverty* case that Congress intended to include stevedores in the classification of seamen in the Jones Act.[6] Such was the

[6] The Merchant Marine Act of 1920 (Act of June 5, 1920, c. 250; 46 U. S. C. A. §§ 13, 597, 599, 688, 802-806, 808, 812-813, 861-889, 911 921-927, 941, 951-954, 961, 971-975, 981-

opinion of Judge Coleman in *Obrecht-Lynch Corporation v. Clark*, 30 F. (2d) 144, 146, 147 (D. C. Md. 1929):

984), of which the Jones Act is Section 33, expressly refers to both stevedores and seamen. In Section 30 of the Merchant Marine Act of 1920 stevedores are twice mentioned in express terms with reference to liens. Act of June 5, 1920, c. 250, § 30, 41 Stat. 1002, 1004; 46 U. S. C. A. §§ 924, 953. Congress would undoubtedly have mentioned stevedores specifically in Section 33 if it had intended to include them under the Jones Act. This interpretation is further substantiated by a later report of the Judiciary Committee of the Senate in connection with legislation concerning stevedores and state compensation statutes, which report was presented by the late Senator Borah under date of June 6, 1921, and designated Report No. 94, 67th Congress, First Session, and reads, inter alia, as follows:

"*There is a clear distinction between the two classes, seamen and landsmen, who work in or about ships,* who were confused in the Johnson Amendment and in the situation which arose in the Jensen case. The distinctions are based upon the facts of their employment, upon the separate systems of law which have hitherto been applied them, and the character of employers which, in the case of seamen, are ships and shipowners, and in the case of landsmen in the main, independent local contractors. (Italics ours.)

. . . . . .

"The rights of a seaman when injured in the course of his employment are governed not by the common-law of torts, but by a special set of rules which are based upon the difference in the conditions of his employment and those of ordinary land workers. A seaman is entitled to maintenance, care, and cure at the expense of the ship and to his wages to the end of the voyage without regard to the question of negligence. When he reaches port the United States Marine Hospital is open to him without expense on his part until he is cured of his illness or injury. This form of compensation for accidents or illnesses incurred by a seaman is of great antiquity; it marks him off very clearly from the landsman who works on ships in port. The rules which govern his right to recover damages for an injury happening at sea because of negligence or fault are different from those which govern the right of recovery of any other class of workmen. *Shuede v. Zenith S. S. Co.*, 216

". . . Parenthetically, it may be added that, although the Supreme Court in International Stevedoring Co. v. Haverty, 272 U. S. 50, 47 S. Ct. 19, 71 L. Ed. 157, has declared that the word 'seamen', as used in the Merchant Marine Act, includes longshoremen employed by stevedores *while on a vessel,* under the Longshoremen's Act, Congress has apparently expressed an intention to remove such persons from the operation of the earlier act, as thus construed by the Supreme Court, and to place them under the later act" (Italics ours.)

See also *Robinson on Admiralty,* at page 320:

"No inference that Congress now seeks to protect stevedores by the Seamen's Act of 1920 can be drawn, because since 1927 Congress has expressly indicated the protection it intends for 'Longshoremen and Harbor Workers' as distinguished from seamen."

Thus it is evident that Congress never intended to include stevedores within the classification of "seamen" when

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Fed. 566, 570. *The special treatment which seamen have always had under the acts of Congress was recently emphasized by the provision in the merchant marine act of 1920 extending to seamen but not to other maritime workers the same rights of recovery in case of work accidents now enjoyed by interstate railway employees.* (Italics ours.)

. . . .

"*Longshoremen and ship-repair men are land workers subject neither to the peculiar conditions nor to the laws which regulate seamen. They form a part of the labor force of each State exactly as other workmen in the port in which they are employed. They are not migratory but local; their wages, their conditions of living are governed by local standards. They do not in all cases form a special class always employed in this work. The peculiar maritime law, applying to seamen, is inapplicable to their condition and no attempt has been made to apply it to them.*" (Italics ours.)

. . . .

it enacted the Jones Act and that the law as enunciated in the *Nordenholt* and *Smith* cases is still applicable.

(c) The Applicability of the Nordenholt and Smith Cases.

Petitioner argues that since the accident in the *Nordenholt* case occurred in 1918, two years before the Jones Act, that case is not controlling. The petitioner, however, fails to consider that, as we have hereinbefore set forth, this Court has many times *since the enactment of the Jones Act* cited the *Nordenholt* case not only with approval but also as authority for the proposition that stevedores injured on the pier are compensated under the applicable state workmen's compensation act.

While the petitioner admits that the objection raised as to the *Nordenholt* case is not applicable to the case of *T. Smith & Son, Inc. v. Taylor, supra*, which was decided subsequent to the enactment of the Jones Act, his argument that the *Smith* case is inapplicable is summarized in these words:

> "It may be that the Court could and should have considered the effect of the Jones Act, but it is amply clear that it did not do so." (Petitioner's brief, p. 20.)

Although your Honorable Court in its opinion in *Smith & Son v. Taylor, supra* at 182, stated that the stevedoring company conceded "that the state law would apply if he had been injured or killed by falling on the landing-place", the petitioner herein is erroneously presupposing that this Court, when it decided the case, was unaware of the question whether the stevedore in the *Smith* case had a right under the Jones Act similar to that which had been given two years before to the stevedore in the *Haverty* case. From our examination of the record and briefs before this Court in the *Smith* case, we are of the opinion that the Court was well aware of the question of the applicability of the Jones Act, for the applicability of the Jones Act was raised by the plaintiff-in-error not only in the Assignment

of Errors,[7] but when the case was argued before this Court the question was again raised by the plaintiff-in-error[8] and

[7] The fifth assignment of error is as follows:

"As this court has found that the decedent, a stevedore, was engaged in a maritime occupation when he was knocked from the wharf or a skid, an extension of the wharf, into the Mississippi River, where his death occurred from drowning, *this court erred in not holding that a right of action, if any, for his death is governed by the 'Jones Act'* Section 20 of the Act of Congress of March 4, 1915, as amended by the Act of June 5, 1920, C. 250, Par. 20, 41 Stat. 988, 1007 (Comp. Stat. Par. 8337a), *and that such Act is exclusive of all state laws upon the same subject matter.*" (Italics ours.)

[8] Under "Grounds for Invoking this Court's Jurisdiction," the plaintiff-in-error stated on page 3 of its brief:

"The Court below further erred in not finding that the principles applicable to a recovery for a maritime injury are limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St. Section 8337a), which statute is exclusive of all State statutes upon the same subject matter, and therefore further erred in taking jurisdiction *rationae materiae* of a suit in which no martime relief is asked."

Under "Cases in Support of this Court's Jurisdiction," the plaintiff-in-error stated on page 6 of its brief as follows:

"Principles applicable to a recovery for a maritime injury must be limited to those which the Admiralty law of the United States prescribes, including the applicable section of the Federal Employers' Liability Act, incorporated in maritime law by Act of June 5, 1920, Section 33 (Comp. St., Section 8337a).

Messel v. Foundation Co., Adv. Sheets, Supreme Court Reporter, July 1, 1927, p. 695.

A stevedore is a seaman within the meaning of Act of March 4, 1915, c. 153; St. 1185, as amended by Sec. 33 of Act of June 5, 1920, c. 250, 40 St. 1007 (Comp.) St. An. Supp. 1923, p. 8337a.

International Stevedoring Co. v. Haverty, Adv. Sheets, Supreme Court Reporter, Nov. 1, 1926, p. 19.

answered by the defendant-in-error.[9] In fact, it seems to us from the record in that case that much of the defense of the stevedore company (which undoubtedly would have been able to prove that it was not negligent, if sued under the Jones Act) and the foundation of its argument to this Court was to the effect that the plaintiff's remedy, if any, was confined to the Jones Act and not to the Louisiana Workmen's Compensation Act. The *Smith* case, therefore, is controlling in this case, notwithstanding the petitioner's attempt to demonstrate otherwise.

The Act of June 5, 1920, supra, is exclusive of all State statutes upon the same subject matter.

Panama R. Co. v. Johnson, 264 U. S., p. 375."

In its Specifications of Error, the plaintiff-in-error made the following statement on page 10 of its brief:

"4th. The Court below erred in not holding that the right of action, if any, in this case is governed by the maritime law, including the Act of March 4, 1915, Section 20, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007 (Comp.) Stat., Par. (8337a), and that such act is exclusive of all State laws upon the same subject matter."

While in its argument, the plaintiff-in-error on page 13 of its brief conceded that a stevedore injured upon the land is limited to recovery under the state compensation law (which, we submit, is a correct statement of the law), the plaintiff-in-error did make the following statement in the summation of the ten points of its argument on page 38:

"10th. Any claims that defendant in error might have, therefore, must be confined within the principles applicable to a maritime injury, including the applicable section of the Federal Employer's Liability Act, incorporated in maritime law by Act of June 5, 1920, *Section 33 (Comp. St., Sec. 8337a)* and the Court below erred in assuming jurisdiction at all of this suit, brought solely under the Louisiana Compensation Law, and doubly erred in rendering judgment under the unconstitutional provisions of that law."

[9] In the "Summary of the Argument," the defendant-in-error stated the following proposition on pages 6 and 7 of her brief:

(d) The Case of O'Donnell v. Great Lakes Dredge & Dock Co.

Finally, the plaintiff, after maintaining that he is a seaman within the meaning of the Jones Act, contends that under the *O'Donnell* case and its dictum he is entitled to recover under the Jones Act even though the injury occurred on the pier.

In *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U. S. 36 (1943) this Court held that a seaman who was injured while working on the pier and in the course of his employment could maintain an action under the Jones Act. In that case a deckhand had been ordered by the Master to go ashore and assist in repairing, at its connec-

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"4. The 'Jones Act,' Section 20 of the Act of Congress of March 4, 1915, as amended by the Act of June 5, 1920, c. 250, Par. 20, 41 Stat. 988, 1007, is not applicable to the case at bar as said Act *applies only to seamen and stevedores engaged on a ship.*

International Stevedoring Co. v. Haverty, 272 U. S. 50 (Decided Oct. 18, 1926)."

(Italics are those of defendant-in-error.)

The defendant-in-error in answering the plaintiff-in-error's aforesaid Fifth Assignment of Error (supra at page 18) made the following argument on page 23 of her brief:

"The 'Jones Act' is entitled, 'An Act to promote the welfare of American Seamen in the Merchant Marine of the United States. . . .' In the case of *International Stevedoring Co. v. Haverty*, 272 U. S. 50, 47 Supreme Court Reporter, 19, decided Oct. 18, 1926, the plaintiff, a long-shoreman, was injured upon a vessel while *engaged in stowing freight in the hold.* In the cited case, this court held that in said statute the word 'seamen' is to be taken to include stevedores '*engaged as the plaintiff was.*' In the case at bar, the Defendant in Error's husband was not engaged as the plaintiff was in the *Haverty* case, but was engaged solely on the wharf. Therefore, we submit, that, the 'Jones Act' has no application to the case at bar, and the Defendant in Error would have no right to make the election permitted by said Act." (Italics those of defendant-in-error.)

tion with a land pipe, a conduit through which the vessel was unloading the cargo. While he was assisting in repairing the gasket, a heavy counter weight used to support the gasket fell on him causing the injuries of which he complained. This Court allowed the seaman to recover under the Jones Act, holding that "the seaman's right to compensation for injuries received in the course of his employment, is one traditionally cognizable in admiralty" even though the injury occurred on the pier.

The reasoning of the plaintiff in claiming that a stevedore, when injured on the pier, has the right to recover on the authority of the *O'Donnell* case is fallacious in two respects.

First, the plaintiff overlooks the background of the *Haverty* case (which we have fully set forth on pages 11 to 17) as well as the philosophy expressed by Mr. Justice Holmes in that case to the effect that when a stevedore was on board ship doing the work of a seaman he was entitled to maintain a suit under the Jones Act like a seaman. Mr. Justice Holmes did *not* say that a stevedore who was working on the pier was a seaman or was entitled to sue under the Jones Act, and to our knowledge no court has ever held that such a stevedore could maintain an action under the Jones Act. Furthermore the plaintiff has not cited any case in which a stevedore on the pier has been allowed to recover under that act. All the cases which the plaintiff has cited as permitting recovery by a stevedore under the Jones Act are *cases involving injuries sustained on navigable waters and all accidents occurred prior to the enactment of the Longshoremen's and Harbor Workers' Compensation Act.* The *Sieracki* case was not a suit under the Jones Act nor against the stevedore's employer. Nor have we been able to find any case in which a stevedore injured on the pier was allowed such a recovery. On the contrary, this Court in both the *Nordahlt* and *Smith* cases has indicated that the state workmen's compensation acts govern the rights of such a plaintiff, and all cases have so held.

Secondly, the petitioner further overlooks the specific language of Mr. Chief Justice Stone in the *O'Donnell* case to the effect that this Court refused to consider whether a stevedore working on the land could recover under the Jones Act. At the conclusion of his opinion in that case Mr. Chief Justice Stone said:

> "We have no occasion to consider or decide here the question whether a longshoreman, temporarily employed in storing cargo on a vessel, if entitled to recover under the Jones Act for injuries sustained while working on the vessel (compare *International Stevedoring Co. v. Haverty, supra*, with *Nogueira v. N. Y. N. H. & H. R. Co.*, 281 U. S. 128, 137), could recover for an injury received on shore in the circumstances of this case. Compare *State Industrial Commission v. Nordenholt Corp.*, 259 U. S. 263, with *South Chicago Co. v. Bassett*, 309 U. S. 251, 256." (pp. 43, 44.)

Obviously, the *O'Donnell* case was not intended to overrule the *Nordenholt* and *Smith* cases. On the contrary, the citation of the *Nordenholt* case and the other cases indicates to us clearly that the *O'Donnell* case was limited in its application to members of the crew; otherwise there would have been no need for the above quoted dictum. Moreover, any other interpretation of that dictum would do violence to the doctrine of *stare decisis*. The precise question involved in this case has already been determined by this Court in the cases which we have heretofore set forth. They have been the legal guideposts for over twenty years.

Furthermore, to permit the petitioner to proceed with this suit under the Jones Act would amount to "judicial legislation" contrary to the intent of Congress as expressed in said statute and as reiterated by the speedy enactment of the Longshoremen's and Harbor Workers' Compensation Act shortly after the "judicial legislation" in the *Haverty* case.

The word "seamen" as used in the Jones Act did not, and never was intended to include stevedores working on the pier were already covered by state workmen's compensation.

CONCLUSION.

We, therefore, submit that the petitioner's effort to distinguish the *Nordenholt* and *Smith* cases and to have the petitioner held a seaman under the *Haverty* case is without legal justification. The Courts-below properly sustained the respondent's Motion to Dismiss (R. 9, 16, 18, 19). To rule otherwise, after stevedores had achieved a uniform system of recovery under workmen's compensation laws (the state compensation act, if injured on land; the Longshoremen's and Harbor Workers' Act if injured on navigable waters) would result to the disadvantage of stevedores in general, for then the question of what, if anything, a stevedore could recover would depend *in reality* on the place where the injury occurs. Under petitioner's contention, the stevedore if injured on a vessel would always obtain a recovery under the Longshoremen's and Harbor Workers' Act (where recovery is predicated on the injury occurring in the course of employment and not on negligence), but if injured on a pier, he could not recover unless he proved that his employer was negligent. Thus the system of compensation which has been established and in force during the past eighteen years would be destroyed. This system of compensation is a sound one, and there is no reason in principle why this system should be destroyed.

Counsel has observed the trend of decisions extending to seamen, when possible, the benefits of social legislation. However, in situations like this case stevedores would not be benefited if it were to be decided that the Jones Act was applicable when they are injured on a pier. The result would be exactly the opposite. Stevedores already have the benefit of state workmen's compensation statutes—social legislation enacted for their benefit—whereby recov-

ery is predicated on the injury occurring in the course of employment and not on negligence. The petitioner has an adequate remedy for his injury since, as set forth in respondent's Motion to Dismiss, he has already been receiving compensation under The Pennsylvania Workmen's Compensation Act. Act of June 21, 1939, P. L. 520; 77 P. S. § 1 et seq. (R. 5-9). Economically and socially it would be a step backward if this system, so successful through the past decades, were to be destroyed, for then a stevedore, when injured on the pier, would be required to prove negligence before his employer could be held liable.

Neither Congress nor this Court ever intended a longshoreman when injured on a pier to recover damages under the Jones Act. The longshoreman, when so injured, is accorded exclusive relief under the local state workmen's compensation act.

The judgments of the Courts below should be affirmed.

Respectfully submitted,

JOSEPH W. HENDERSON,
GEORGE M. BROOMHEAD,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 405.—October Term, 1945.

Charles Swanson, Petitioner, vs. Marra Brothers, Inc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 22, 1946.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioner, a longshoreman in the employ of respondent stevedoring company, while on a pier and engaged in loading cargo on a vessel lying alongside in the harbor of Philadelphia, was struck by a life raft which fell from the vessel and injured him. The question for decision, which was reserved in *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U. S. 36, 43, 44, is whether petitioner may maintain a suit against his employer to recover for the injury, under the Jones Act, 41 Stat. 1007, 46 U. S. C. § 688.

Petitioner, after having sought and received compensation for his injury under the state employers liability act of Pennsylvania, brought the present suit in the District Court for Eastern Pennsylvania "pursuant to the Maritime Law as modified by Section 33 of the Merchant Marine Act of 1920" (the Jones Act). He alleged as the cause of the injury respondent's breach of duty in failing to provide a safe and seaworthy vessel and appliances and a safe place for petitioner to work, and in failing to make the life raft secure and to make adequate inspection of it. The district court dismissed the complaint, holding that there could be no recovery under the Jones Act by one not a seaman for an injury suffered by him while on shore. 57 F. Supp. 456. The Court of Appeals for the Third Circuit affirmed. We granted certiorari, — U. S. —, because of the novelty and importance of the question presented.

The Jones Act provides in pertinent part:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply. . . ."

The Act thus made applicable to seamen, injured in the course of their employment, the provisions of the Federal Employers' Liability Act, 45 U. S. C. § 51 *et seq.*, which give to railroad employees a right of recovery for injuries resulting from the negligence of their employer, its agents or employees. *Panama R. Co.* v. *Johnson*, 264 U. S. 375; *The Arizona* v. *Anelich*, 298 U. S. 110, 118.

We have held that a stevedore who was injured while storing cargo, and while on but not employed by a vessel lying in navigable waters, was authorized by the Jones Act to bring suit against his employer to recover for injury caused by the employer's negligence. *International Stevedore Co.* v. *Haverty*, 272 U. S. 50; *Uravic* v. *Jarka & Co.*, 282 U. S. 234. It was thought that both the language and the policy of the Act indicated that by taking over principles of recovery already established for the employees of interstate railroads and in making them applicable in the admiralty setting, Congress intended to extend them to stevedores, the employees of an independent contractor, while working on a vessel in navigable waters and while rendering services customarily performed by seamen. *International Stevedore Co.* v. *Haverty*, *supra*, 52; see *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, *supra*, 38, 39.

Petitioner, in urging that the doctrine of the *Haverty* case be extended so as to allow him to recover for his injuries sustained on shore, places his reliance on *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, *supra*. We there held the ship owner liable under the Jones Act, for injuries caused to a seaman by a fellow servant while the former was on shore engaged in repairing a conduit which was a part of the vessel and used for discharging its cargo. But in that case we sustained the recovery because the injured person was a seaman and an employee of the vessel, engaged in the course of his employment as such. An incident of his employment by the vessel as a seaman was his right to maintenance and cure for injuries received in the course of his employment, a cause of action traditionally cognizable in admiralty. *The Osceola*, 189 U. S. 158, 175; *Calmar S. S. Corp.* v. *Taylor*, 303 U. S. 525, 527-528. The jurisdiction of admiralty over such a cause of action depends, not on the place where the injury was inflicted, compare *The Plymouth*, 3 Wall. 20; *Cleveland Terminal*

R. R. v. Steamboat Co., 208 U. S. 316; see *Minnie v. Port Huron*, 295 U. S. 647; *The Admiral Peoples*, 295 U. S. 649, but on the nature of the seaman's service, his status as a member of the vessel, and his relationship as such to the vessel and its operation in navigable waters. *O'Donnell v. Great Lakes Dredge & Dock Co., supra*, 42-43; cf. *Calmar S. S. Corp. v. Taylor, supra*.

Congress, in thus enlarging an admiralty remedy, was exercising its constitutional power to regulate commerce, and to make laws which shall be necessary and proper to carry into execution powers vested by the Constitution in the Government or any department of it, Art. I, § 8, cl. 18, including the judicial power which, by Art. III, § 2, extends "to all Cases of admiralty and maritime Jurisdiction." By § 9 of the Judiciary Act of 1789, 1 Stat. 76, 28 U. S. C. §371, (Third), Congress conferred on the district courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right to a common law remedy where the common law is competent to give it. . . ." By the grant of admiralty and maritime jurisdiction in the Judiciary Article, and by § 9 of the Judiciary Act, the national Government took over the traditional body of rules, precepts and practices known to lawyers and legislators as the maritime law, so far as the courts invested with admiralty jurisdiction should accept and apply them. See *O'Donnell v. Great Lakes Dredge & Dock Co., supra*, 40, and cases cited.

We have no occasion to consider here whether Congress, by the Jones Act, undertook to or could give a remedy against the employer for injuries caused by a vessel to his employees, not members of the crew of the vessel, while working on shore. For Congress, by later legislation, has expressed its purpose to restrict the liability of the employer under federal statutes to injuries to his employees occurring on navigable waters or inflicted upon an employee who is either a master or a member of a crew of the vessel, injured in the course of his employment as such.

Within six months after the decision in the *Haverty* case and nearly sixteen years before our decision in the *O'Donnell* case, Congress enacted the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, 44 Stat. 1424, 33 U. S. C. 901 *et seq.*, which gave a remedy against employers by way of compensation for disability or death suffered on navigable waters by any employee not a "master or member of a crew of any vessel".

§ 903. The liability of employers to pay the prescribed compensation is, by § 905, made "exclusive and in place of all other liability of such employer to the employee", his legal representative and any other person entitled to recover damages "at law or in admiralty" from the employer for the injury or death. By § 903(a)(1) recovery may be had under the Act only "if recovery for the disability or death through workmen's compensation proceedings may not be validly provided by State law."

The Act both imposes liability on the employer for injuries on navigable waters to employees not including the master or members of a crew of a vessel, and makes the prescribed liability to employees within the coverage of the Act exclusive. The Act thus excludes from its benefits stevedores not members of the crew who are injured on navigable waters from recovering under the Jones Act as interpreted by the *Haverty* case. Those provisions make plain that Congress' own interpretation of the Jones Act is such as to preclude the extension of the doctrine of that case to the specified employees injured on land.

We can hardly suppose that Congress, while explicitly denying a right of recovery under the Jones Act to maritime workers not members of a crew who are injured on board a vessel, either thought that the Jones Act extended to injuries inflicted on shore to employees not members of a crew, see *State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 263, 273; *South* v. *Singleton* v. *Taylor*, 276 U. S. 179, or intended that there should be established for such workers injured on shore, by extension of the doctrine of the *Haverty* case, a right of recovery which it at the same time withdrew from such workers when injured on navigable waters. The Senate Judiciary Committee, in recommending the legislation which became the Longshoremen's and Harbor Workers' Compensation Act, expressed doubt as to the constitutional power of Congress to give recovery to such employees injured on shore, saying "These men are mainly employed in loading, unloading, refitting and repairing ships; but it should be remarked that injuries occurring in loading and unloading are not covered unless they occur on the ship or between the wharf and the ship so as to bring them within the maritime jurisdiction of the United States." Sen. Rep. No. 973, 69th Cong., 1st Sess., p. 16. Cf. *Cleveland Terminal R. R.* v. *Steamship Co.*, *supra*; *The Admiral Peoples*, *supra*.

We must take it that the effect of these provisions of the Longshoremen's Act is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery recognized by the *Havertу* case only such rights to compensation as are given by the Longshoremen's Act. But since this Act is restricted to compensation for injuries occurring on navigable waters, it excludes from its own terms and from the Jones Act any remedies against the employer for injuries inflicted on shore. The Act leaves the injured employees in such cases to pursue the remedies afforded by the local law, which this Court has often held permits recovery against the employer for injuries inflicted by land torts on his employees who are not members of the crew of a vessel. *State Industrial Commission* v. *Nordenholt Corp.*, *supra*; *Smith & Son* v. *Taylor*, *supra*; cf. *Minnie* v. *Port Huron Co.*, *supra*. And it leaves unaffected the rights of members of the crew of a vessel to recover under the Jones Act when injured while pursuing their maritime employment whether on board, *Warner* v. *Goltra*, 293 U. S. 155; *Norton* v. *Warner Co.*, 321 U. S. 565; see *South Chicago Co.* v. *Bassett*, 309 U. S. 251, 255-6, or on shore, *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, *supra*.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.